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WATER CARRIER MIXING RULE EXEMPTION

GOVERNMENT

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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. 1314

TO AMEND SECTION 303(b) OF THE INTERSTATE COMMERCE
ACT TO MODERNIZE CERTAIN RESTRICTIONS UPON THE
APPLICATION AND SCOPE OF THE EXEMPTION PROVIDED
THEREIN.

JUNE 28 AND 29, 1967

Serial No. 90-21

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WATER CARRIER MIXING RULE EXEMPTION

WEDNESDAY, JUNE 28, 1967

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

The subcommittee met at 10:10 a.m., in room 1202, New Senate Office Building, Hon. James B. Pearson presiding.

Present: Senators Magnuson and Scott.

Senator PEARSON. This is a meeting of the Subcommittee on Surface Transportation, and Senator Lausche, who cannot be with us this morning because he is attending another committee meeting, has a statement that I will read in his absence.

OPENING STATEMENT OF THE CHAIRMAN

This is a hearing to be held before the Surface Transportation Subcommittee of the Committee on Commerce on S. 1314, introduced by Senator Magnuson, for himself and for Senator Hartke, at the request of the Common Carrier Conference of Domestic Water Carriers, and the American Waterways Operators, Inc.

S. 1314 proposes to amend section 303(b) of the Interstate Commerce Act in two respects: (1) to strike from the second sentence a parenthetical expression which defines bulk commodities in terms of the custom of the trade as of June 1, 1939; and (2) to strike from the third sentence a provision defining two or more vessels, while navigated as a unit, as a single vessel.

There will be inserted in the record at this point a copy of S. 1314, and the reports of the Comptroller General and the Department of Transportation on this bill.

(The documents referred to follow:)

[S. 1314, 90th Cong., first sess.]

A BILL To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section 303(b) of the Interstate Commerce Act, as amended (49 U.S.C. 903(b)) is amended (1) by striking from the second sentence thereof the parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)". (2) By striking the third sentence in its entirety.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 4, 1967.

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

DEAR MR. CHAIRMAN: Further reference is made to your letter of March 20, 1967, requesting our comments on S. 1314 entitled a bill "To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein."

Section 303(b) of the Interstate Commerce Act, 49 U.S.C. 903(b), exempts from regulations of the Interstate Commerce Commission, under Part III of the Act, transportation by water carriers of commodities in bulk under certain conditions. The exemption is applicable only when the vessel (barge) and the flotilla of barges navigated as a single unit (tow) in which the bulk commodities are transported contain not more than three such bulk commodities. The exemption is lost as to the entire lading if more than three bulk commodities are carried in the same vessel or tow or if any non-bulk commodity is carried in the same vessel or tow with what would otherwise be exempt bulk commodities. Moreover, the exemption applies only to bulk commodities which were so considered in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939. See *Commercial Barge Lines v. United States*, 166 F. Supp. 867 (1958), affirmed 359 U.S. 342; *Gulf Canal Lines, Inc. v. United States*, 258 F. Supp. 864 (1966), affirmed by the Supreme Court of the United States, March 20, 1967, 35 Law Week 3328.

S. 1314 would amend section 303(b) by striking out (1) the parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)" and (2) the third sentence, which reads "For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel."

The elimination of the parenthetical expression (1) would remove from regulation by the Interstate Commerce Commission under Part III of the Act the transportation of bulk commodities (where not more than three commodities are carried in a barge) regardless of the custom of the trade in 1939 or whether there was any bulk carriage or existing custom in the handling of the particular commodity in 1939. The striking out in its entirety of the third sentence to section 303(b) (2) would have the effect of applying the not-to-exceed-three-bulk commodity exemption to each individual vessel (barge) rather than to the entire flotilla of barges (tow). The proponents of the bill apparently assume the proposed changes in the language of the section would also permit the intermingling of regulated and non-regulated traffic, without loss of the exemption, in that a tow could consist of one or several barges of bulk commodities (no one of which would carry more than three commodities) and also a barge or barges containing non-exempt commodities. We do not feel the language proposed would necessarily be so interpreted by the Interstate Commerce Commission or the Courts and if the bill is to be given favorable consideration by your Committee, we recommend inclusion of clarifying language to that effect in the bill.

The enactment of S. 1314 would have the effect of broadening the present water carrier's exemption from regulation. This exemption was enacted in the Transportation Act of 1940, when modern day barge transportation on the inland waterways was still in its infancy and apparently a need existed for such exemption from regulation. Whether under present conditions in the transportation industry considered as a whole, water carriers of bulk commodities have need for and should be granted the exemption from regulation and whether the present exemption should be extended and broadened as proposed, are essentially matters of policy for determination by the Congress.

To the extent that the exemption from regulation is broadened, the involved carriers would not, as to the exempt traffic, file tariffs and would not be subject to the Interstate Commerce Act. This would make our audit of rates on Government shipments of such bulk commodities more difficult and possibly require negotiations by the administrative offices with the carriers prior to shipment in order to protect the Government from unreasonable charges for services performed. The removal of this segment of Government transportation from regulation would also place the adjustment of charges outside the scope of Section 322 of the Transportation Act of 1940, 49 U.S.C. 66, as amended by the Act of August 26, 1958, 72 Stat. 859, 860, and remove the adjustment of charges from applica-

tion of the three-year statute of limitation provided therein. From an audit viewpoint, it would appear desirable to maintain as much uniformity as possible in the handling of Government transportation accounts. The exemption of a segment of accounts from the normal channels of collection would impose a burden on our audit procedures and would interfere with our disposal of records program. However, the volume of Government shipments which would move in such exempt mode of traffic, other than under section 22 quotations (49 U.S.C. 22), likely will not be large and hence the Government insofar as it ships and purchases transportation of the type of traffic which the bills concerns, would not appear seriously affected by the proposed changes.

Sincerely yours,

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

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 9, 1967.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 1314, a bill to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

Presently, section 303(b) extends an exemption from economic regulation by the Interstate Commerce Commission to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This exemption is applicable only in the case of commodities in bulk which are "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)" loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. In applying section 303(b), two or more vessels while navigated as a unit are considered to be a single vessel.

The proposed legislation would strike the parenthetical clause quoted above. The net effect of such action would be to free the definition of what constitutes a bulk commodity of a trade custom of over a quarter of a century ago, if indeed it is possible to determine precisely today exactly what such a custom may have been or meant. As a result, bulk traffic would now be accorded a readily understandable and easily applicable definition. For these reasons, the Department would favor this aspect of the legislation.

In addition, S. 1314 would eliminate the requirement that two or more vessels while navigated as a unit be considered to be a single vessel. This proposal would permit the regulatory exemption to be applied to each vessel in a multi-vessel tow rather than to the tow itself, and is designed to overcome a statutory interpretation by the Commission in Mississippi Valley Barge Co. Exemption, Section 303(b), 311 I.C.C. 103, which subjected movements by a certificated tow of a barge of three or less bulk commodities in a mixed towload along with non-bulk freight to economic regulations. This holding was sustained upon judicial review.

Extension of the exemption in the manner proposed to each vessel in the tow would be consistent with sound operating practices and with the realistic economics of modern water carrier transportation. It would remove past artificial barriers to the free flow of commerce. It has become increasingly apparent that the need for rate regulation in this area of transportation serves a public purpose of little or no significance. The Department would therefore also support this portion of the proposal.

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.

Senator PEARSON. The first witness this morning is the distinguished chairman of our committee, Senator Magnuson, who will testify at this point.

STATEMENT OF HON. WARREN G. MAGNUSON, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MAGNUSON. Thank you, Mr. Pearson. I want to say that I am sorry that Senator Lausche cannot be here, but he does have a very urgent committee meeting, and I will have to leave briefly to go down to the Appropriations Committee. I am sure everyone understands the situation. I do have a statement, Mr. Chairman, that I would like to present.

Mr. Chairman, I am appearing as a witness this morning to stress the importance of early and favorable action on S. 1314, which I introduced, to modernize the water carrier mixing rule exemption.

There should be no dispute at these hearings about the fact that the archaic and complicated mixing rule exemption in the 26-year-old Transportation Act of 1940 stands as a bar to the realization of greater efficiency in inland waterway transportation. Transportation over this period of time has grown and added considerably to the whole transportation economy of these United States.

In 1940 transportation by water, by rail, by highway, by air, and by pipeline, utilized a far simpler technology than we have today. In the last 26 years, each mode of transportation has developed more powerful, more efficient, and greater carrying-capacity equipment, providing our Nation's shippers and consumers—we think the best—with the world's greatest transportation system, and the only one primarily under private enterprise. We want to keep it that way.

In rail transportation, for example, the average number of cars in a freight train in the 1936-40 period was 47. Today the average number of cars has increased to approximately 70 per train. But that is only part of the story. In terms of net ton-miles per train-hours, which takes into consideration the newer, heavier cars and the increased train speeds, we have seen trains double in the past 20 years.

A typical barge tow of the early 1940's consisted of a towboat of 300 to 1,500 horsepower capable of pushing six to 12 barges transporting anywhere from 5,000 to 10,000 tons. Today towboats of 4,000 to 9,000 horsepower are capable of pushing 40 or more barges of over 50,000 tons of cargo, which will be pointed out here by the testimony later.

This technological progress on the waterways would be brought to a standstill under the restrictive wording of the exemption in section 303(b) as interpreted by the Interstate Commerce Commission.

In the 86th Congress, this committee established a special study group on domestic transportation policies. One of the matters studied was this water carrier mixing rule exemption. The report of the study group commented on the "bits of restrictive regulation which contribute to poor utilization and otherwise increase costs among water carriers," which in turn increases costs to shippers, and recommended repeal of the mixing rule (page 531) :

The effect of this rule on regulated water carriers who desire to participate in bulk traffic is to force them to separate bulk traffic from nonbulk traffic in a separate tow or vessel regardless of the effect upon efficiency of the carrier, service to the user, or upon national transportation costs. Thus, we place economic

and service penalties upon the very carriers it is our national policy to preserve. In the interest of efficient use of equipment, leading to lower overall transportation costs, and in the interests of assisting the regulated water carriers to maximize their potential of service at the lowest reasonable cost, we recommend repeal of the mixing rule insofar as certificated common carriers are concerned.

The special study group recommendations embrace the same areas as the amendments contained in S. 1314. In my judgment, Mr. Chairman, the changes embodied in S. 1314 are an improvement over the special study group recommendations, and represent an approach agreed upon by all segments of the water carrier industry and by maritime labor.

The study group also recommended substitution of a new definition of bulk commodities for that now contained in section 303(b). S. 1314 would delete entirely the parenthetical expression in the second sentence which refers to the custom of the trade as of June 1, 1939. Both the study group recommendations and S. 1314 would eliminate the need for an inquiry as to what moved in bulk before or after June 1, 1939. Deletion of the parenthetical expression would be preferable to rewriting the definition in order to avoid future interpretation questions.

The study group recommended repeal of the bulk commodity exemption, and the substitution of new categories of carriers. S. 1314 would delete the third sentence of section 303(b), to permit the mixing in a flotilla barges of both bulk commodities, regardless of the number of such commodities, and so-called regulated commodities.

The third sentence of section 303(b) now provides that for the purposes of that subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. Whenever by law two things are asserted to be one for certain purposes, or one thing is defined as something else for certain purposes, difficulties are bound to be encountered. This has proved to be the case with this definition in section 303(b). By striking the sentence in its entirety, S. 1314 treats a barge as a barge for purposes of the exemption, regardless of whatever else might be in another barge in the tow.

This approach is supported by both the Common Carrier Conference of Domestic Water Carriers and the American Waterways Operators, Inc., and, in my judgment, will avoid intramodal controversies which could be created under the study group proposal. And it has taken a long time, Mr. Chairman, to arrive at this agreement.

There has long been a need for the changes embodied in S. 1314. I think industry and labor are to be commended for reaching agreement on provisions to allow realization of the full fruits of technological progress.

The Supreme Court on March 20 of this year upheld an ICC decision which as a practical matter will mean the end of certain longstanding practices that have enabled the water carrier industry to achieve the economies of larger tows without a change in section 303(b). The Interstate Commerce Commission has fixed a compliance date of January 1, 1968, for implementing the Supreme Court decision. Therefore, it is important, I think, that Congress should take prompt action. The Congress should take prompt action to avoid an increase in water carrier transportation costs and, as a consequence, a sharp increase in rates.

I, of course, support S. 1314, and hope the subcommittee will achieve early favorable consideration and report it to the full committee, so

we can get some action on this longstanding need for the whole transportation system of these United States.

Senator PEARSON. I want to thank the chairman for his contribution for the record.

I talked to Senator Lausche. He is going to pursue this today and tomorrow and report to the full committee just as soon as possible.

Senator MAGNUSON. Thank you very much.

Senator PEARSON. The next witness is the distinguished vice chairman of the ICC, Mr. Tierney, and we would like very much to hear from him at this time.

I feel like we are holding a hearing in the Grand Canyon this morning, but in spite of the vastness of the space, I would hope that we proceed informally and Mr. Tierney, you may just proceed as you see fit, reading or summarizing your statement in whatever way you feel that it would make the greatest contribution to the committee's work this morning.

STATEMENT OF PAUL J. TIERNEY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION, WASHINGTON, D.C.

Mr. TIERNEY. Thank you very much, Mr. Chairman; may I say first that Chairman Tucker, who was scheduled to appear this morning, was unable to be here today because of an emergency in his family which occurred last evening.

I will read the statement, Mr. Chairman; it is relatively short.

My name is Paul J. Tierney. I am the Vice Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

On behalf of the Commission I wish to thank the subcommittee for the opportunity to express our views on S. 1314, introduced by Senator Magnuson and Senator Hartke, which amends section 303(b) of the Interstate Commerce Act to modernize certain restrictions on the application and scope of the exemption provided therein.

At the present time, section 303(b) provides an exemption from regulation of the transportation, by water carriers, of commodities, in bulk, when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. The exemption has several limitations, the pertinent ones being set forth in the second and third sentences of section 303(b). The second sentence contains a parenthetical expression which defines bulk commodities in terms of those "which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count." The third sentence provides "for the purposes of this subsection two or more vessels when navigated as a unit shall be considered to be a single vessel."

The changes proposed by S. 1314 would (1) strike from the second sentence the parenthetical expression, and (2) strike the third sentence entirely. The pertinent amended subsection 303(b) then would read:

(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities

in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. * * *

The definition of bulk commodities in terms of the custom of the trade as of June 1, 1939, has resulted in much confusion and some litigation. Many commodities, such as chemicals and sugar, were carried by water carriers in containers as of June 1, 1939, but because of efficiency and convenience are now carried in bulk in modern barges and tankers. By orders in WC-2, decided November 17, 1958, and WC-6, decided October 20, 1960, the Commission declined to review the issues presented, and denied petitions of certain barge carriers and other interests which requested the issuance of declaratory orders to remove uncertainty respecting whether or not the transportation by water of various commodities, in bulk, is exempt under section 303(b) by reason of the custom of the trade clause.

Considerable litigation has also arisen over the second limitation in section 303(b).

Common carriers on inland waterways engaged in towing and affreightment are subject to regulation by the Commission under part III of the act. Unless expressly exempted, they are required to possess certificates of convenience and necessity for the routes on which they operate; maintain reasonable rates, charges and practices; publish and adhere to tariffs; file reports and comply with other regulatory requirements. Under section 303(b), transportation of not more than three bulk commodities in a single vessel or vessels being navigated as a unit (a flotilla) is exempted from regulation and may be performed without regard to certificated route authority or of published tariff rates. Since 1941, the Commission, in a number of proceedings, has considered the scope of this exemption as applied to tows which "mix" bulk cargoes with nonbulk cargoes. Although section 303(b) exempts bulk cargoes from economic regulation, the Commission has consistently held that this exemption does not apply when exempt bulk commodities are "mixed" or carried in the same tow with nonbulk (and nonexempt) commodities. In these circumstances, the entire movement is subject to regulation. Although it has been argued that this so-called "no mixing" rule applies only to the water carrier actually towing the mixed load, the Commission has held otherwise in *Mississippi Valley Barge Co., Exemption*, section 303(b), 311 ICC 105, sustained in *Gulf Canal Lines, Inc., v. United States*, 258 F. Supp. 864 (1966), affirmed *per curiam* by the Supreme Court on March 20, 1967. This proceeding arose in 1959 on a petition for a declaratory order by a number of certificated water carriers having noncertificated affiliates, which handle exempt contracts of affreightment for bulk commodities. After entering into such a contract with a shipper, a noncertificated barge line may engage the certificated carrier to tow the shipment from an intermediate point to its ultimate destination, where the noncertificated carrier then takes possession again and delivers the barge to the consignee. The question involved here arises when, in performing its contract of towage, the certificated carrier combines bulk and nonbulk commodities in a single tow.

The net effect of this decision, which would be overturned by this bill, is to require the carriers involved to cease the transportation of "mixed" tows or, in the alternative, subject the transportation of other-

wise exempt bulk cargoes to economic regulation by the Commission when such commodities are transported with nonexempt cargoes. Because of the need for additional time to comply with the Commission's order and because of the pendency of this legislation, the Commission, at the request of the parties in this proceeding, has stayed the effective date for compliance with its order until January 1, 1968.

The effect of this legislation on the described portions of present section 303(b) will be to simplify, but simultaneously broaden, the scope of the exemption as presently interpreted by the Commission. The transportation by water of all commodities in bulk (except in intercoastal commerce) irrespective of whether they were so handled during June 1939, will be within the scope of the exemption. Further, by deletion of the third sentence in present section 303(b), this bill would broaden the scope of the exemption in two ways. First, it would overturn the Commission's determination that the mixing of exempt and nonexempts commodities subjects the entire movement to regulation. Second, because this deletion would eliminate the present standard that two or more vessels (i.e., barges) operated as a single unit shall be considered as a "single vessel," the present limits of three bulk commodities in a tow would be eliminated and as many as 60 separate bulk commodities could be carried in a tow of 20 barges.

Since the railroads, which are the water carriers' principal competitors for bulk commodity traffic, have always been subject to full economic regulation by the Commission, we have recommended on a number of occasions that the exemption provided by section 303(b) be repealed in its entirety in the interest of providing equality of competitive opportunity and regulatory treatment among the several modes of transportation. No action has ever been taken on these proposals by Congress. Although we continue to believe that the present exemption is neither conducive to fair and effective regulation nor to effectuation of the goals of the national transportation policy, we also recognize that there is substantial congressional sentiment for the retention of this exemption. In these circumstances, the present situation is inequitable and unfair to substantial segments of the water carrier industry. As I have noted previously, the Commission's order in the *Mississippi Valley* proceeding requires that the carriers either cease towing mixed shipments or file tariffs and rates on otherwise exempt commodities. The first alternative would preclude the carriers from making efficient and economical use of their equipment and facilities while the second would place carriers in a poor competitive position vis-a-vis other competing water carriers who tow only bulk cargoes and thus would be fully within the exemption afforded by present section 303(b).

In conclusion, we have no objection to this bill if the Congress as a matter of policy feels that the inequitable effects of this exemption, as between water carriers, should be eliminated. However, we continue to believe that repeal of the exemption will ultimately be required as a necessary step toward elimination of inequalities between carriers of different modes.

And that concludes my prepared statement, Mr. Chairman, and if there are any questions, we will be delighted to attempt to answer them.

Senator PEARSON. Thank you very much, Mr. Tierney. I think this is an excellent statement, and I think we ought to seriously consider the recommendations you made; that is, the exemption or the deletion of the entire section of 303(b), but we will continue with the legislation we have before us.

In your statement, I think you very precisely set forth the problem. I would like to do it again in summary as a basis for other testimony which will come forward.

What is the problem? The bulk commodities measured back against June 1, 1939, are such that transportation has substantially changed; is that right?

Mr. TIERNEY. That is the circumstance. Commodities which, probably, as I understand it, were carried in containers prior to June 1, 1939, are now——

Senator PEARSON. The illustration is shown.

Mr. TIERNEY. Now with improvements, technological and improvements in the barge area, they carry those commodities in bulk rather than in containers as such.

Senator PEARSON. What is the other part of the problem?

Mr. TIERNEY. The other problem relates to No. 1, the so-called mixing rule as it pertains to the mixing of exempt commodities with non-exempt commodities in a tow. The Commission in the *Mississippi Valley* case determined if nonexempt commodities or regulated commodities are carried in a tow with exempt, the entire tow was subject to the regulations by the Commission.

The other aspect of the problem is that this legislation would permit the carrying of three bulk commodities in one barge, whereas before the legislation required only the three bulk commodities could be carried in an entire unit or a tow, several barges; otherwise, it would not be exempted.

Senator PEARSON. In anticipation of some of these exhibits, I took the opportunity to look very quickly through the testimony last night. I have noticed that there has been a great improvement and great change in the nature and mechanics of water transportation today.

Mr. TIERNEY. No doubt about that.

Senator PEARSON. This is a substantial contribution, and I thank you very much. Just a moment, and I will see if counsel has a question.

Mr. SENDER. In the Comptroller General's comments on this bill, he raises a question as to the way it might be interpreted by the Interstate Commerce Commission, as follows:

The proponents of the bill apparently assume the proposed changes in the language of the section would also permit the intermingling of regulated and non-regulated traffic, without loss of the exemption, in that a tow could consist of one or several barges of bulk commodities (no one of which would carry more than three commodities) and also a barge or barges containing non-exempt commodities. We do not feel the language proposed would necessarily be so interpreted by the Interstate Commerce Commission or the Courts and if the bill is to be given favorable consideration by your committee we recommend inclusion of clarifying language to that effect in the bill.

My question is: What is the Commission's interpretation?

Mr. TIERNEY. We have interpreted it as permitting the mixing, as I understand the question, the mixing of nonexempt with exempt commodities.

Senator PEARSON. Do you have a copy of that letter before you?

Mr. TIERNEY. I do not.

Senator PEARSON. Would you like to see a copy of it before you answer?

Mr. TIERNEY. I would.

Senator PEARSON. Mr. Tierney, after you look at that, we would like to have any comments at this time or if you would like the Commission to look at it and submit it for the record, that would be fine.

Mr. TIERNEY. I would like to take a look at it. We have so interpreted this language, however, it is obviously a technical question and we would like our staff to examine it and submit it for the records. We have interpreted this language as permitting, the language of this bill, as permitting the mixture of bulk commodities with nonexempt commodities. (See pp. 106 and 107.)

Senator PEARSON. Do you have any further questions?

Mr. SENDER. One further question. What would be the impact of this bill in connection with liquid commodities? You may also wish to submit a statement on that for the record, liquid commodities hauled in liquid form.

Mr. TIERNEY. I wouldn't think it would affect these as I interpret the bill.

Senator PEARSON. Liquid is considered nonbulk commodity; is it not?

Mr. TIERNEY. No, sir; it is an exempt bulk commodity.

Senator PEARSON. Nonexempt.

Mr. TIERNEY. No; it is exempt.

Senator PEARSON. All right. Thank you very much. We are very pleased to have you here this morning.

Mr. Hershey is listed as the next witness. He is the president of the American Commercial Lines, Inc., of Houston, Tex. He has with him a number of other people. We would be very glad to have them present themselves at this time. If you would like all of them to come up to the witness table, that would be fine.

STATEMENT OF J. W. HERSHEY, PRESIDENT, AMERICAN COMMERCIAL LINES, INC., OF HOUSTON, TEX., ACCOMPANIED BY L. P. STRUBLE, JR., EXECUTIVE VICE PRESIDENT, DRAVO CORP., PITTSBURGH; AND W. J. BARTA, PRESIDENT, MISSISSIPPI VALLEY BARGE LINE, ST. LOUIS, MO.

Mr. HERSHEY. Thank you very much, Senator.

Senator PEARSON. Would you like to introduce for the record and for the committee those people sitting with you, and then you may proceed in any manner you see fit?

Mr. HERSHEY. I would like to introduce on my left, Mr. Struble, of the Dravo Corp., who will explain the technological innovations in the industry; and on my right is Mr. Barta, president of the Mississippi Valley Barge Line Co., St. Louis, Mo. We together will attempt to explain to the committee the problems and dilemma we find ourselves faced with at the present time. Mr. Struble will now start.

Mr. STRUBLE. My name is L. P. Struble and I am executive vice president of Dravo Corp., of Pittsburgh, Pa. Dravo is a complex of enterprises in the construction, manufacturing, engineering, shipbuilding,

and transportation industries. Our company has built over 5,000 hulls for inland river service in the 51 years since our first piece of floating equipment was launched in 1915. Among Dravo's major subsidiaries is the Union Barge Line Corp., which operates over 6,200 miles of the inland waterways.

I have been associated with Dravo since 1935 and have had many assignments related to the rivers. From 1956 to 1961 I was president of Union Barge Line Corp. From 1961 to 1966 I was general manager of Dravo's engineering works division which, among other activities, designs and builds towboats and barges.

My assignment today is to outline the technological development of transportation equipment used on our vast, shallow draft, inland waterways system of 25,380 miles and relate this development to the year 1940, when domestic water transportation was brought under regulation by the Interstate Commerce Commission. A map showing the inland waterways is there on your right.

I could go back to the 1700's when the Ohio River was the artery of commerce used by the early pioneers who settled in the West and the South. This review would encompass the story of the flatboat, the keelboat, and packetboat and the early push-type towboats employed in the late 1800's. I could describe the "glory days" of the packetboats, throw in a few stories about the legendary river hero "Mike Fink" and outline the demise of river transportation as the new railroad industry developed and took over the movement of goods as our country expanded to the West.

However, for the purpose at hand, I will start with the year 1929 when canalization of the Ohio River was completed. From that time on, river transportation between the industrial center of Pittsburgh and the expanding markets in the South and Southwest, became a 365-day-per-year operation. No longer were sailing schedules dependent on the whims of the weather. Fleets of barges and towboats did not have to lie in the Pittsburgh harbor for months awaiting a flood which would buoy the equipment over the sandbars and rocks of the river on the way down to the Mississippi. Other river developments soon followed. The Illinois River improvements opened the route from Chicago to the same markets in 1933. Canalization of the upper Mississippi from St. Louis to St. Paul and Minneapolis was completed in the late 1930's.

With the canalization of the Ohio, Tennessee, Illinois, Kentucky, and upper Mississippi Rivers, and channel development on the Missouri, navigation became a scientific operation. The national program of water resource development of the Congress had many objectives, of course, but the development of the rivers as a transportation resource was a major objective, along with the objectives of flood control, drought control, bank stabilization, power and, more recently, recreation. I have a picture in my files of the Ohio River in the early 1900's. It shows a horse and wagon being driven across the river and the water doesn't come up to the wheel hubs. If the dams had not been built and a stable supply of water provided for electric power generation and for other industries, the economic development of the Ohio Valley would have been quite different.

It was in response to the national policy decision to develop navigation that the river operators and the shipyards started to redesign and

improve the old western river steamboat which had seen no fundamental, technological changes since the late 1800's. This was only natural as the inherent delays and related costs of operating on an undeveloped river were so extensive that there was little or no incentive to develop operating efficiencies that mean so much today with the modern river towboat.

One of the first improvements was the switch from paddle wheels to propellers. While several propeller-type towboats had been built prior to 1929, they were not generally accepted in the trade. The 500- or 600-horsepower, stern-wheel steamboat was the principal motive power on the Ohio River. This boat could push very well, but when it came to steering, she was deficient. As she approached a bend in the river, it was necessary to reverse the paddle wheel and direct the water against her rudders in order literally to back around the bend. This operation is known as flanking. Because of poor control many a river tow ended up aground on the riverbank when the swift current was too much for this type of operation to ensure safe passage along the winding river.

A second major improvement was the switch from the steam engine to the more efficient diesel engine with its low maintenance costs and capability for continuous operation without significant downtime for repairs. Steamplants required frequent downtime to wash boilers and perform other maintenance and repairs. The first major diesel engine installation in a river towboat occurred shortly after 1929.

In 1934, the first of the modern type, twin-screw, diesel towboats appeared on the Ohio River. Her name was the *Peace* and she had 760 horsepower, just about the same power as was employed in the larger size stern-wheel steam towboat. While this boat was very successful, several years of experimentation with rudder arrangements were necessary. This towboat would steer very well while moving ahead, but when a "flanking operation" was tried, her steering ability was not quite as good as was experienced with the stern-wheel towboat.

A third major innovation was the "Kort" nozzle, an importation from Germany in 1936. The nozzle is shown on the picture to your right. This metal shroud around the propeller which concentrated the water against the propeller blades, added some 25 percent to the effective push or thrust of the towboat while underway. It also produced savings by protecting the propeller from damage from groundings in low-water areas. By strategically locating rudders forward and aft of the nozzles, the naval architects developed a towboat which had absolute steering control, forward and backward, plus the added faculty of being able to slide sideways with no forward motion while maneuvering and making up a tow. That again is illustrated on the board on your right and is also included in the exhibits which I will submit.

The decade of the 1930's was devoted to perfecting these developments. They were not universally accepted immediately. The subject of propeller versus stern paddle wheel was argued vigorously at any gathering of rivermen. However, by 1940, the efficient positive-steering propeller boat had started to gain wide acceptance.

I should emphasize that date of 1940. It was the year of the passage of the Transportation Act of 1940 which placed domestic water transportation under the regulation of the Interstate Commerce Commission. It was a year, also, when the shape of modern river operations was just beginning to appear.

World War II halted further development of river craft except for 21, 2,000-horsepower, steam-driven, twin-screw towboats known as DPC's built for the Defense Plant Corp. These were real monsters, served their purpose at the time when diesel engines were unavailable, but were very inefficient.

Following World War II, technological innovation continued. Manufacturers of river equipment were being urged to develop more powerful towboats for two main reasons. First, on the lower Mississippi, the prevention of floods and the developing navigation channels had resulted in a swifter flowing river and this in turn meant that the barge-lines needed more power to push upstream against the current. It will interest you to know that the Mississippi River is more than 100 miles shorter today than it was in 1940. A shorter river means a faster current. Also, of course, the operators wanted to push a great volume of barges and hence achieve lower unit costs of operation.

More horsepower was desirable, but the direct connected, reversing, slow-speed diesel engine was so cumbersome and heavy that hull-size limitations dictated a maximum horsepower of about 2,000. The breakthrough to higher power came with the development of the reversing reduction gear which allowed the use of higher-speed diesel engines, which decreased the physical dimensions of the power unit and also so reduced the weight that more horsepower could be put into a normal size towboat hull. Perfection of the supercharger added even more horsepower for a given weight and today we have twin-screw towboats with 6,400 horsepower and triple and quadruple screw towboats with horsepower ranging up to 9,000. However, it was not until late 1955 that the first of these modern powerful towboats appeared on the rivers.

When the Ohio was originally canalized, it had 53 locks with chambers 110 feet by 600 feet. A double-locking tow consisted of a towboat and a maximum of 20 barges, 175 by 26 feet. Assuming 800 tons per barge, this made a 16,000-ton tow. In the late 1930's it was clear that it would be necessary to replace and enlarge the locks on the Ohio River system. Construction began shortly after the war and by the late 1970's the replacement program will be completed. Each dam will have a lock of 110 by 1,200 feet. Hence a double-locking tow could then consist of 34 barges of 1,200- to 1,400-ton capacity, or about 40,000 tons. I would like to point out 34 barges of 195 by 30 feet, hence the difference in capacity of a barge. Couple this increase in capacity with the fact that the redevelopment of the Ohio will make possible a 12-foot instead of a 9-foot channel and the potential for further improved efficiency in the future is tremendous. These major changes in navigation facilities require a similarly massive response from private industry in new investment in more powerful towboats and larger barges.

The increase in power of towboats accomplished by greatly improved steering control are of course the major technological advances, but there have been a number of improvements in bargeline operations which, taken together, mean a further substantial increase in inland waterway productivity and reduction in costs.

A major development was the use of a specially developed short-range radar. Without it, in bad weather and on dark nights, particularly in foggy weather, towboats tied up to the bank rather than operated. Radar helped make the operation 24 hours, day in and day out.

It is impossible to put a specific figure to the improved productivity resulting from a number of electronic advances, but all of them help. Depth finders help avoid groundings, swing indicators (highly sensitive indicators of change of direction of the tows) are helpful in high winds, automatic pilots make for more efficient steering, ship-to-ship and ship-to-shore telephones expedite operations, automated engine rooms improve crew productivity, bow thrusters expedite handling of long tows in sharp bends and in terminal areas and stainless steel propellers contribute to low maintenance costs.

Along with the development of the power unit, there has also been radical improvement in the design and capacity of barges. From an 800- to 900-ton standard barge of 15 years ago, we have progressed until today the most modern barges are capable of carrying 1,200 to 1,400 tons. Following a series of tests in model tanks, the shape of the barges has been greatly modified to reduce water resistance and produce greater speeds and more efficient use of power. Shipyard building techniques have also been improved and made more productive.

Rather than spell out all these detailed improvements, I would like to introduce an exhibit for the record which goes into greater detail on the developments I have mentioned. Those are the exhibits which we have here.

In summary, we have reached the point at which the productivity of our towboats has more than tripled in the past 16 years. The technology has opened out opportunities for great savings in operating costs which the bargelines have translated into benefits to shippers and consumers. We can now handle 30- and 40-barge tows with ease. We look forward to the day when 60-barge tows of barges loaded to 12-foot depths will bring new and even greater economies to the commerce of the Nation.

The engineers have developed a most effective technology; the bargelines are ready to apply it in the public interest. The only roadblock is the obsolete wording of a 1940 act which S. 1314 is designed to remedy. Engineers can only tell you what can be done; it is the policy-makers who must decide whether the available technology will be applied to the public interest.

Thank you.

Senator PEARSON. Thank you very much. I take it that the real point of your testimony is to describe the technological improvements. While you went back past 1940 to show with particular emphasis those improvements from 1940, I think you said that the Transportation Act of 1940 places domestic transportation under the regulations of the Interstate Commerce Commission, and those things and the advancements that you have detailed, testified about, make a very persuasive case.

Let me ask you this. Technology overran our regulations and laws in this particular case. What are you working on now? What is going to develop a year from now? What is going to happen 5 years from now in the way of new improvements? I noticed you indicated 30 and 40 and up to 50 and 60 barges. What are the things just beyond the horizon in this field?

Mr. STRUBLE. Well, of course, the thing we are working on right now is to put greater horsepower in our towboats, and we are running tests on towboats with up-modeled tows on boats to the horsepower up

to 12,000 horsepower. We have a lot of things to do to reach that. We have the problem of propeller loading, and the problem of available gear arresters and the problem of diesel engines available for that task. We may have to find some other source of motive power. We are alerted to what is going on in gas turbines. We don't see yet how we can apply them to our river operations. One of the key things in the river operation is the fuel rate, the number of pounds of fuel required per horsepower-hour, and the fuel rate of a gas turbine is just out of the question.

I think our other direction, which is really not related to this testimony, is the development of high-speed tows in the area of liquid cargo, although it is conceivable that you could have high-speed tows of bulk commodities other than liquids. It just so happens that on liquid tows, why your equipment is always loaded to capacity. When you are handling bulk or nonbulk commodities, you are sort of at the mercy of the customer as to how heavy he can load the barges, and that, of course, depends on his market demand.

I think in response to what you said earlier, what I am trying to point out is that when the act was passed in 1940, the river trade generally was operating in the same manner that it had been operating in 1929. Therefore, while we think we have vision and foresight, I don't think the operators had any idea that the technology would advance to the point that it has today.

Senator PEARSON. Thank you very much, sir. These exhibits will be made a part of the record. They are a very considerable contribution to our understanding of this problem.

(The documents referred to follow:)

NAVIGABLE LENGTHS AND DEPTHS
OF UNITED STATES INLAND WATERWAY ROUTES

COUNTRY	1970		1971		1972		1973	
	1970	1971	1970	1971	1970	1971	1970	1971
United Kingdom (includes of Isle of Man)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
France	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Germany	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Sweden	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Switzerland	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Netherlands	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Belgium	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Austria	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Portugal	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Greece	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Spain	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Italy	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
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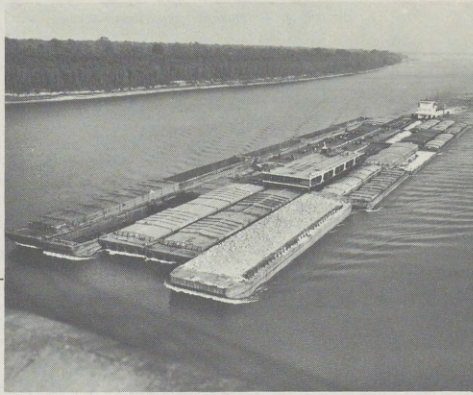
COMMERCIALLY NAVIGABLE
INLAND WATERWAYS
OF THE
UNITED STATES

CONTROLLING DEPTH

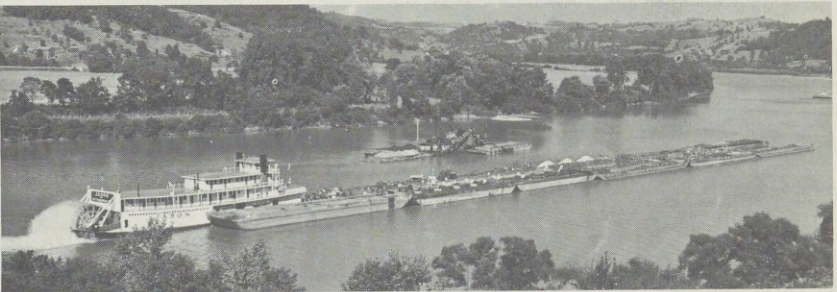
9 FEET OR MORE
+++++
UNDER 9 FEET

PROPOSED EXTENSIONS





Technological Developments on Inland Waterways



An exhibit prepared by L. P. Struble, Jr., Executive Vice President, Dravo Corporation, Pittsburgh, Pennsylvania, in support of his testimony before the Surface Transportation Subcommittee of the Committee on Commerce, United States Senate, June 28, 1967.

Introduction

The success story of river transportation is one which parallels very closely the myriad of technological improvements introduced down through history. The rivers, of course, have always been recognized as a natural means of transporting goods, particularly those of large size and weight. Although there must have been many innovations applied to river craft back when the settlers were moving west, the greatest strides could not be realized until Mother Nature's wild seasonal antics could be harnessed to allow the waterways to provide continuous navigation.

There are six major situations peculiar to navigation on the rivers. They demand the attention and skill of both the pilot and the design engineer.

1. Moving up river against the current.
2. Moving downstream with a current.
3. Rounding a bend (with or against the current).
4. Shallow water.
5. Visibility.
6. Narrow channels.

When moving upstream, the major problem is to obtain sufficient velocity through the water not only to



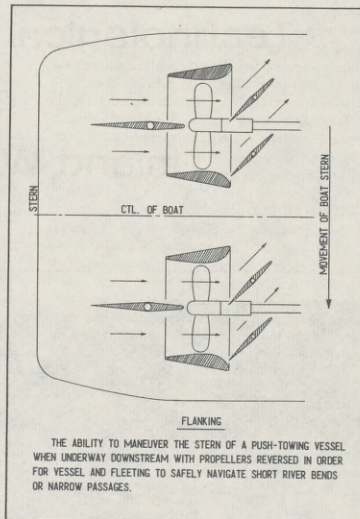
Pilot house visibility.

overcome the current, which may be as high as 7 mph, but to economically deliver cargo to rather distant ports following an acceptable schedule.

The river current increases the speed of tows headed downstream and therefore contributes to the speed of delivery. This addition to the powered velocity of the fleet, however, also increases the problems of slowing and sometimes stopping the fleet with respect to the river bank in order to negotiate difficult river bends or narrow channels.

To negotiate some bends downstream, it is necessary to slow the fleet and to flank. Flanking is a steering-while-backing maneuver that is accomplished by directing the propellers astern against special backing rudders which are forward of the propellers.

Shallow water has always been, and still is, the biggest problem in transporting goods on the rivers. Of course, boats and barges must have no more draft than



will clear the bottom of the river. If a barge operator employs the maximum draft, however, he not only takes a greater risk of damage to his hull, but he must also be willing to accept a severe penalty to his speed due to the resistance created as the water is "squeezed" under the tow.

Understandably, good visibility is critical in the close confines of river operation. Impairments such as fog, heavy weather, darkness and obstructions such as a point of land at a river bend must be overcome for safe operation.

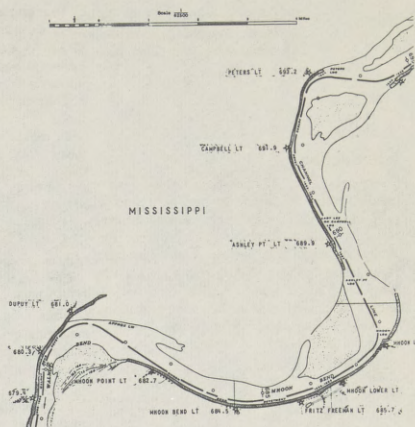
Although rivers such as the mighty Mississippi appear quite wide, the room available for navigation varies with the season and with the geological make-up and path of the channel. If the draft of a tow requires the deeper water of the main channel the navigable width becomes that of the relatively narrow channel and not the total distance between river banks. As an example, the maintained channel of the Mississippi is 9 foot deep by 300 feet wide.

To provide the pilot with a better idea of his position and relationship with his surroundings, aids such as radar, depth finders, high intensity searchlights and radio communication have continuously been refined. Pilot houses are well above the level of the tow, affording a panoramic view.

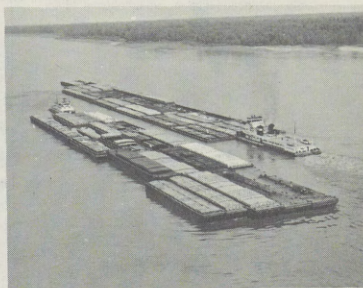
Most of the technological improvements are in some way related to one or more of the six categories listed above. These improvements are certainly unique to the problems of the river. Some, of course, have been adopted to solve navigation problems encountered in harbors, lakes and coastal waters. Some developments on the rivers have been readily adaptable to solve problems in unrelated industries. Major technological breakthroughs are presented in the following pages.

River Improvement

In its natural condition the Ohio River was a succession of pools connected by shallows. These shallows were impassable for larger boats during low stages of the river and were dangerous at all times. Larger boats and coal tows were only able to navigate the river during freshets and floods. Besides rocky riffles, the early riverboat men had to contend with sand bars, tree roots and other snags.



FLANKING BENDS ON LOWER MISSISSIPPI RIVER



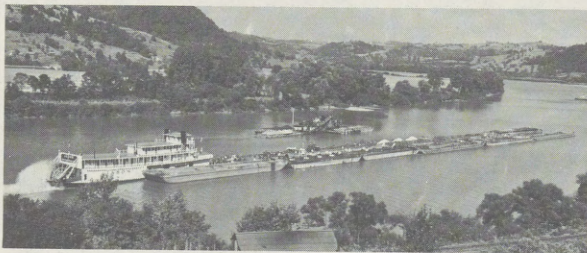
Tow passing in mid-river channel.

The greatest obstacle to navigation on the Ohio, however, was the Falls of the Ohio at Louisville, Kentucky. As a result of great agitation, a canal around the Falls was begun in 1825 and completed in 1830. Other improvements to the river such as the building of dikes and the removal of obstructions were begun about this time.

In the 1870's, a series of locks and dams similar to those on the Monongahela River was proposed for the Ohio River. The proposal, as finally agreed upon, called for 53 locks and dams to be built. A standard lock size of 600 feet by 110 feet was decided upon, and a controlling depth of nine feet established. The dams were to be of the wicket type that could be lowered when high water made open navigation possible.

Construction on the first dam was begun in 1878 at Davis Island, below Pittsburgh, and was opened to commerce in 1885. The value of the dam was immediately evident since it afforded Pittsburgh its first ample pool of water in the dry season. Work on other dams began in 1898, and the final dam was completed in 1929.

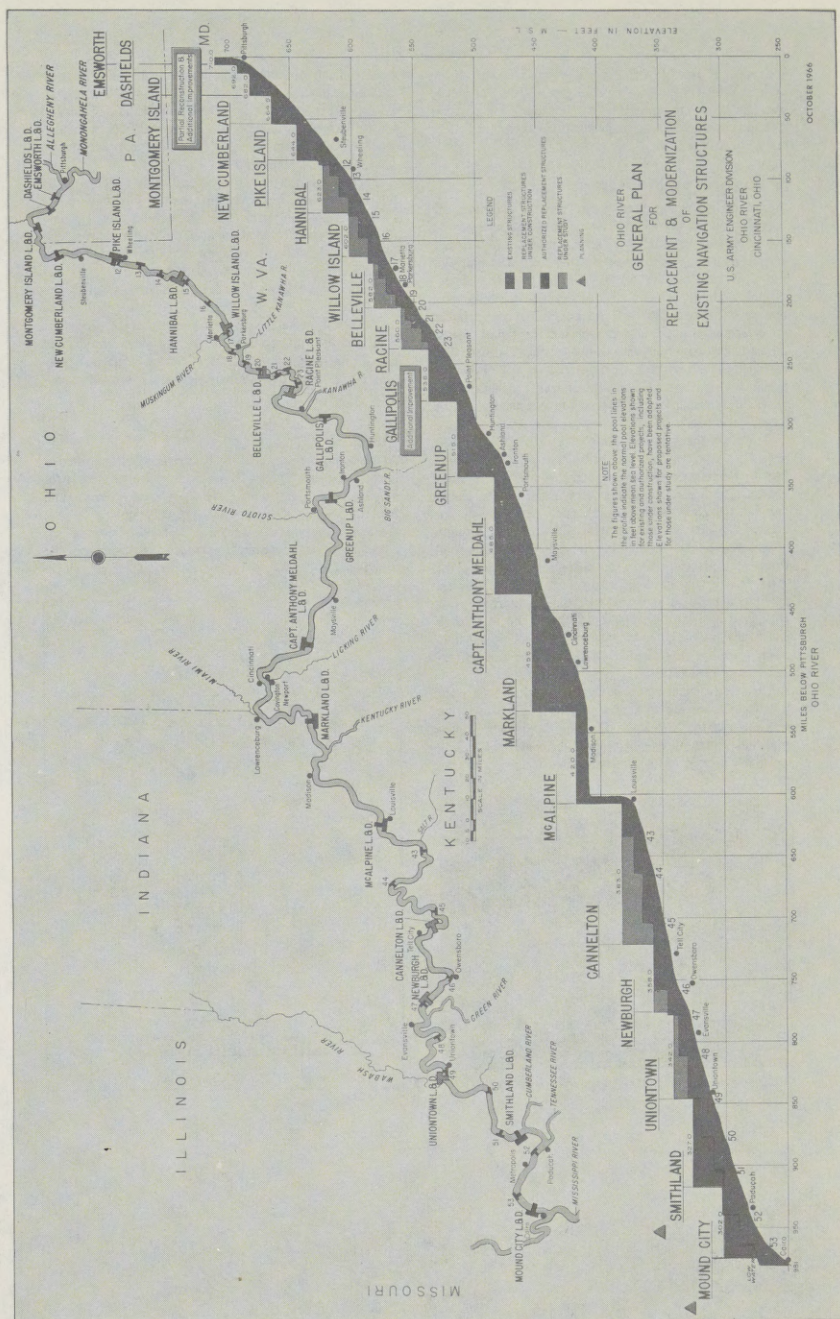
Following World War II it was apparent that traffic on the river would increase to such an extent that the existing structures just could not handle it all effectively. A new system of higher dams and locks with 1200-foot by 110-foot chambers was inaugurated. When completed this new system will increase the channel depth to about twelve feet and reduce the number of locks from the original 53 to the proposed 19. Locking de-



Early towing with a sternwheeler.

lays will be further reduced by relieving, at least for the present, the need for "double lockings" whereby one part of a tow is passed through a lock, followed by the second part.

Other rivers were opened to navigation as time went on so that now river service extends from the Gulf Coast to Minneapolis, Chicago, Sioux City, Nashville, Knoxville, and Pittsburgh. Similar emphasis on technological improvements helps to serve cities along the



Columbia River. Construction of locks and dams on the Arkansas River will soon allow industrial and commercial growth comparable to the rate of expansion being experienced on the waterways already open to navigation.

Sternwheel vs. Propeller

Although it was not readily apparent at the time, the canalization of the Ohio River meant the end of the sternwheel towboat. Twin screw boats had already started operating on the lower Mississippi, but many of the operators on the Ohio believed that the screw-propelled boats lacked the necessary flanking and maneuvering capacity. At the beginning of propeller development this belief was, for the most part, based on some bad experiences and was entirely justified. The extremely shallow water encountered on the Ohio had precluded large propellers, and propeller design, especially in relation to the specialized conditions of the inland river trade, needed considerable refinement.

The sternwheel paddle towboat also had had a long period in which to develop. Sidewheel paddle steamers had first appeared on the western rivers in the early 1800's. These early steamers were packet boats, carrying both freight and passengers. The demand for greater capacity led to attempts to tow barges, actually unpowered packet boat hulls, behind the packets, and when that proved totally unsatisfactory, to carry the extra hull on one side. The present form of towing, pushing a concentrated mass of barges in front of a boat, had its inception in the 1840's in the Pittsburgh coal trade, although towing "knees" to aid in pushing did not appear until around 1865 and were not universal until after 1880.

The sternwheeler was a natural for push towing since it was advantageous to keep the source of power at the very stern of the tow. Even the trade favored the stern-wheelers. Everything went down river. Essentially these tows were large rafts floating downstream, with the

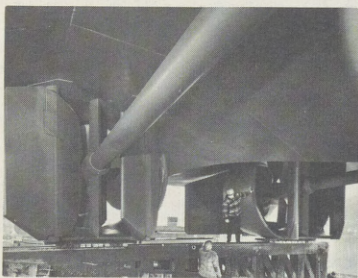
paddlewheel providing some steering control and some braking capacity. High thrust upriver was not particularly necessary, since up-bound tows consisted only of empty barges. Then, too, the sternwheel could "walk" itself across shallow places where a propeller driven vessel could go aground.

The completion of the lock and dam system on the Ohio River and improvements to the channel on the lower Mississippi justified the accelerated development of the screw-propelled towboat. More power was needed to push downstream, and with the greater depths available, propellers became more practical.

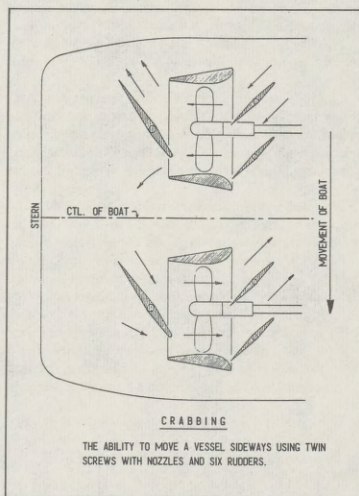
Propeller efficiency increases with increasing propeller diameter. To take advantage of this relationship, tunnel sterns were developed allowing larger propellers which could absorb higher horsepowers while still navigating in existing depths of water. This also permitted the design of larger rudders and improved rudder arrangements.

Steering

As more power was effectively installed, the number of barges in a tow increased, making a positive system for maneuvering a necessity. The combined steering and flanking rudder system was originally unique to the Western Rivers but within the last two decades has gradually been recognized on waterways throughout the world.



Under-hull view of tunnel and propulsion elements.



Stern view of early Kort nozzle.



Considerable experimentation was tried on stern-wheel towboats to improve maneuverability, but the propeller towboat inherently had better steering control due to the higher velocity of water impinging directly on the rudders.

Although the combined steering and flanking system will be quite effective on a boat with only one propeller, riverboats are almost exclusively multi-screw vessels. By having two or more propellers, there is a corresponding safety margin if one power unit should break down. Also by having more than one propeller, advantage can be obtained by "twisting" and "crabbing."

Twisting is a relatively simple maneuver which involves turning one propeller ahead while the other turns astern.

Crabbing is a term applied to a twin-screw towboat's ability to move directly sideways. This is accomplished by placing the steering rudders hard over one direction and the flanking rudders hard over the opposite direction while turning one propeller ahead and the other astern.

The proper application of rudders to shallow draft towboats is both a science and an art. Not only has there been extensive investigation of the size and number of rudders involved with each propeller, but the location and angle of attack has been found to be extremely critical. Special mechanical methods have been developed for the flanking engines to allow the rudder to be angled to the propeller flow lines in centered position for least resistance when towing straight ahead. Yet when the pilot calls for hard over rudder when flanking, his rudders become parallel for maximum maneuverability.

Since rudders are particularly vulnerable to damage, their design has been developed to the point where a modern towboat is seldom drydocked primarily for rudder repairs.

Propellers are also vulnerable to damage and for many years were the cause of drydocking a towboat at

all too frequent intervals. Two major improvements helped minimize damage to propellers: 1.—The use of stainless steel as a propeller material; 2.—The application of the Kort nozzle. In the early 1950's, the technology of casting high-tensile stainless steel allowed use of stainless wheels with a net economic gain. Not only does the stainless steel stand up exceptionally well under rugged use, because of its inherent toughness and work hardening, but it is also reasonably easy to repair when this occasionally becomes necessary.

Kort Nozzle

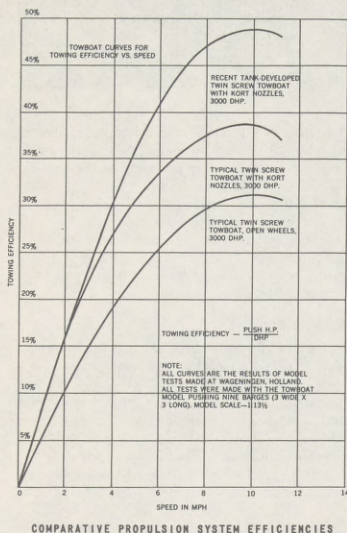
In 1937 a diesel towboat, the "Pioneer," was fitted with a device called a Kort nozzle. The device, essentially a steel ring of air foil section encircling the propeller, had been developed in Europe and was reputed to increase propulsive efficiencies substantially. The experiment was extremely successful. Both forward push and backing power were increased. The "Pioneer," when built in 1934, was an open wheel towboat. By measuring performance before and after installation of the Kort nozzle, a comparison was made. In bollard condition, which is pushing at full power against a dock, the forward push was increased 45% while astern performance was increased 42%. An average improvement in thrust when underway with a fleet of barges is about 25% using the Kort nozzle.

The number of barges that a boat of a given size and horsepower could handle was significantly increased. Where before a boat might only be able to push ten loaded barges, now it could push sixteen barges and maintain better control over them because of its increased flanking and backing power.

An added feature of Kort nozzles is the protection that they provide for the propellers. Maintenance records for converted vessels indicate very substantial reductions in repair costs for rudder and propeller damage. Down time for repairs is also reduced with a corresponding increase in productivity and more de-

pendable deliveries.

Steering and flanking was further improved by the application of the Kortz nozzle. A more predictable and stable stream flow through the propellers resulted in rudder installations with very little additional drag. Also, the velocity of the water in the vicinity of the propellers and rudders is higher when Kort nozzles are used, and the impingement force on the rudders is greater. The Kort nozzle has indeed contributed to the development of extremely efficient and highly maneuverable towboats.



Steam vs. Diesel

Paralleling the change from sternwheel to propellers has been the change from reciprocating steam power to diesel. The first towboats on the river were, of course, steam-powered. There were no alternates available. The first steam generators were crude upright boilers without flues. Later horizontal boilers with multiple flues and compound engines were developed. Condensers were introduced as soon as the problems connected with their excessive weight could be overcome. In the late 1920's and early 1930's, some steam turbine electric-powered vessels were built. It was to no avail. Once diesel engines had been developed to the point where they could be considered a dependable mode of power, steam could no longer compete.

Steam had several disadvantages. In the first place, in the horsepower ranges in use on towboats, it is inherently inefficient. Many of the larger boats carried a coal barge along side just to keep a supply of fuel. Oil fired boilers helped but were not enough. In the second place, the installations when compared to diesel engines were just too large and heavy. As diesel technology developed, it became possible to utilize more than twice as much horsepower in the same size hull. Then, too, the steam plant required a greater complement of men to tend it. It could not be shut down as easily nor started up as easily as the diesel. Finally, the application of diesel power eliminated the hazards associated with steam boilers.

The early diesels were heavy slow-turning machines usually directly connected to the propeller. Reversing was accomplished by stopping the engine and starting it in the other direction. Although they were better suited for driving propellers, many were used to turn sternwheels, the power transmission being accomplished either by a right angle gear drive at the wheel or through a chain drive.

By 1945 diesel towboats outnumbered steam vessels on the inland rivers almost two to one, and although

there were still slightly more large steam vessels on the rivers than large diesels, the most powerful boats were fast becoming diesel-driven. This was the era of 1000 to 2000 maximum horsepower.

Around-the-Clock Navigation

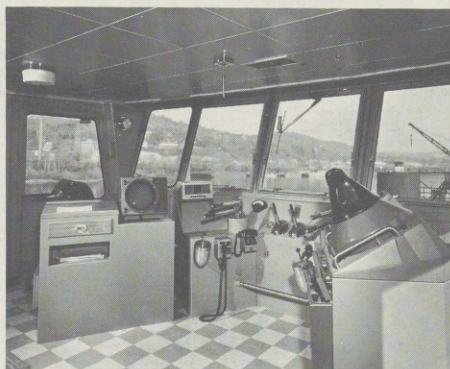
Prior to 1946, the movement of traffic on the rivers was almost entirely dependent on visual contact and audible signals for navigation, for the avoidance of collisions and for the arrangement of passing procedures. When fog closed in, the tows simply had to tie up to the bank and wait for the fog to lift. Navigation was possible at night but usually at reduced speed. Unusually dark nights or heavy rains or snow often resulted in further delays. Needless to say, schedules under these conditions were quite erratic.

Communications were poor, and owners were often out of touch with their towboats for days at a time. The pilots navigated the river almost entirely on the basis of their knowledge of the channels and how they usually changed under certain conditions. Unfortunately, river channels are influenced by many factors that often interact in different ways. Groundings were very common. This added to the uncertainty of schedules and sometimes resulted in the loss of equipment and valuable cargoes.

In 1946, the "Tri-State" was equipped with a radar set. This was the first such installation on the inland rivers, and even though the set was crude and unreliable by today's standards, it was extremely successful. For the first time, tows could continue to operate 24 hours a day, in fog or in heavy rains. Schedules became more predictable. Today nearly all towboats are equipped with a modern radar set, and many have two sets. This equipment is quite reliable and furnishes the pilot with a clear picture of his position in the river and his relationship to other fleets and even navigation aids such as buoys.

Other electronic aids have also done much to improve the efficiency of river operations. Most tows are equipped with a depth-sounding device called a fathometer with the transducer mounted on the head of the tow and the display unit mounted in the pilot house of the towboat. These units are connected by a long cable led back over the fleet. This equipment gives the pilot some warning when he is running into shallow water and is quite helpful in avoiding groundings. In addition, this equipment is used in periods of high water to obtain information on how the channels are shifting for future use when the water returns to normal levels.

Great strides have been made in radio and telephone communications equipment. Owners can usually contact their towboats at almost any time and thus can provide their customers with much better service. Communication between towboats has done much to improve the safety and speed of operations. Arrangements for



Navigation aids in the pilot house.

fleets passing each other are usually made over the radio, and audible signals are used simply for confirmation and to conform with the rules of the road. The radio provides the pilot of a large down-bound fleet with a way of warning up-bound traffic that he is entering a restricted channel or a difficult turn where passing will be hazardous if not impossible.

Radio is also used for contacts with lock personnel and has expedited traffic during times of congestion.

Medium High Speed Diesels

In the period following World War II, traffic on the rivers began to increase rapidly. More horsepower, to move barges farther, became a prime consideration. One of the outgrowths of the war had been the development of high speed and medium speed diesel engines which could develop more power while remaining relatively compact.

The slow speed diesels, turning 275 rpm and developing 1000 hp have been replaced today by medium speed diesels turning 800 rpm and developing over 3500 hp. Nor has the development of these diesels lagged. In 1950, one 176 foot boat was equipped with two diesels developing 1600 hp each at 750 rpm. Recently a 180 foot boat was launched with two diesels developing 3150 hp each at 800 rpm. This last boat pushes tows of 30 barges as a matter of course and can handle fleets of over 40 barges carrying over 60,000 tons on the lower Mississippi River.

The increase in power available has, by necessity, been paralleled by an increase in propeller technology. Because of the limiting depths of rivers, propeller diameters have been increased to where they are only 75% below the level waterline. Tunnels have been carefully refined to accommodate these larger propellers and higher horsepower. The higher loadings placed on the propeller have resulted in four and now five bladed propellers, as well as changes in the design of Kort nozzles.

Towboat designs of the late 1950's include skin coolers for removing waste heat from the diesel engines. Earlier practice was to pump raw river water aboard and pass it through a tube-type heat exchanger. This presented problems with clogging, corrosion, and ice in the "sea chests." Skin coolers are heat exchangers made from channels or extra plating along the hull. The fresh jacket water from the engines is circulated in these skin coolers.

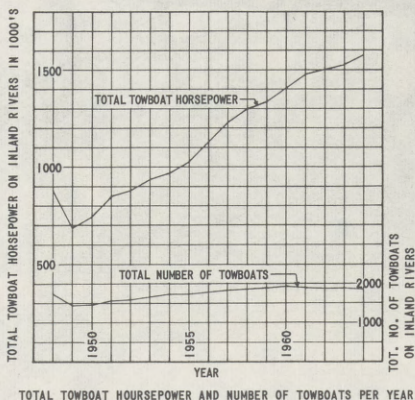
Smaller boats, too, have benefited from the development of the high speed diesel. Boats developing 500 hp in 1955 now are being equipped with engines developing over 1000 hp and weighing very little more. In many cases, the actual physical dimensions of the engines and gears are less. These smaller, but now more powerful, towboats can be used in the more confined waterways collecting or distributing barges that make

up the larger fleets. The larger towboats are not wasted on handling only a few barges or making up a fleet as the barges become available. As a result, fleets can make a round trip faster.

Automation

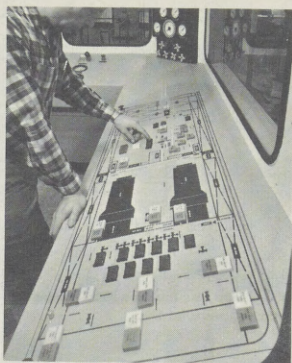
In the days when steam boats were handling most of the tonnage on the rivers, crews of twenty and twenty-five men on a towboat were common. Three to four men were required on each watch in the engine room alone.

The development of medium and high speed diesel engines eventually reduced the need for watch standers in the engine room to one per watch. This was due to the facts that the pilot could maneuver the diesel engines from the pilot house by remote control and that diesels require very little adjustment as long as they are functioning properly. Over the years, the reliability of diesel engines has improved markedly. In recent times, it has become clear that the engine room watchstander is there only to handle infrequent emergencies and routine maintenance.



TOTAL TOWBOAT HORSEPOWER AND NUMBER OF TOWBOATS PER YEAR

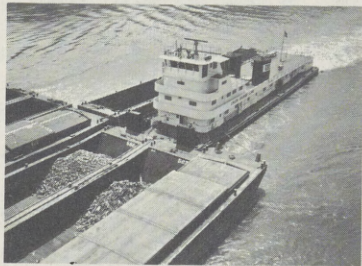
(Compiled by American Waterways Operators, Inc. from U. S. Army Corps of Engineers' data.)



Remote auxiliary control console.



Electrical control center of the vessel including automatic load transfer panel.



Towboat to fleet coupling.

The next step, starting in 1960, was to develop a system of monitors, for essential functions, and remote controls so that there would no longer be any need to have a man on watch in the engine room at all times. In general these systems provide alarm indicator panels in the engine room, the chief engineer's stateroom, and the pilot house. For emergencies, where action must be taken quickly in order to prevent loss or severe damage to the towboat or fleet or severe damage to the main engines, the pilot is provided with sufficient information and equipment, including main engine shutdown switches, to permit him to take whatever action is needed. For lesser emergencies, the alarm system is such as to insure that the chief engineer will be on the scene in a reasonable length of time. Provisions are also included for automatic starting of the standby generator and the transfer of electrical load to that generator in the event of a malfunction in either the electrical equipment or the prime mover of the generator that is on the line.

Other systems have been developed to reduce the routine work of the engineering force. Remotely operated fuel and ballast transfer systems have been designed and are now in use. Remotely operated bilge pumping systems have also been developed, and some of these have provisions for fully automatic operation. The elimination of the need for a watchstander and the reduction in the amount of routine work required of the engineering force has made it possible to reduce this force to one man.

Among other features that have been added to either reduce the work of the crew or improve the efficiency of the operation are power operated winches and capstans on the bow of the towboats. This equipment permits the deck force to put together larger and larger tows quickly and efficiently. A recent trend is to have switches for the deck winches located in the pilot house so that the pilot can also operate the winches. This facilitates the fleeting-up operation in two ways. First, by having the pilot operate the winches, a member of the deck force is made available for other line-handling activities as soon as he has made the initial connection. Second, the pilot is more sensitive to the maneuvering of the boat and can better decide when to haul-in or slack-out the cables.

One of the newer innovations in river transportation is the use of bow steering units. As the length of tows exceeded 1000 feet and the breadth approached the width of the lock chambers, it became increasingly difficult to maneuver the fleets into the locks and to negotiate tight bends in the rivers. Even at relatively gentle bends, the bow thruster helps avoid the time lost either by slowing or by losing power due to rudder drag.

The bow steering unit is in essence a propeller and propulsion unit mounted at the forward end of the fleet to help maneuver the head of the tow. This unit has taken

several different forms. In one instance, the propeller has been located in a fixed skeg at the bow of one of the lead barges near the baseline. The thrust of the propeller, in this case, could only be directed in an athwartships direction and the propeller could not be retracted. A second approach is to have a retractable propeller that can be steered through 360°. A third method that has been used is to mount the bow steering unit in a separate hull that is then lashed to the head of the tow. This idea makes it possible to switch the unit from one tow to another. In all cases, these units are controlled from the pilot house of the towboat either by direct electrical connection or by radio.

Since the river winds almost continuously in ever changing directions, a compass is of very little use. However many towboats since the 1950's have installed gyro compasses that are interconnected with the steering controls. This form of auto-pilot provides four advantages.

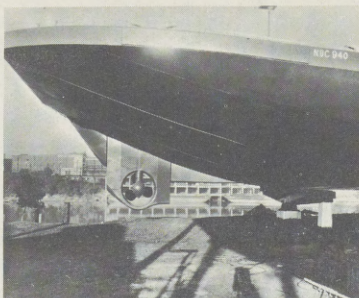
1. The sensitivity of the gyro results in very little angle of rudder to hold course which reduces loss of speed due to rudder drag.
2. The pilot needs only to set or adjust his course every so often as the river direction changes and does not have to manually compensate for every tendency to go off course.
3. Recent auto-pilot equipment provides rate-of-turn control which again minimizes the degree of rudder angle used in rounding a bend.
4. The gyro repeater acts as a swing indicator particularly effective when navigating at night or by radar.

Habitability

Among the many features incorporated to keep the net cost of river transportation low are those involved with safety, health and comfort. The modern river towboat is equipped with "all the comforts of home" and then some! To avoid time lost from injury, particular attention is paid to environmental safety. Since the late 1950's, many vessels have been fitted with semi and fully automatic CO₂ smothering systems for engine compartments. Some operators have painted their towboats and barges with color schemes both to warn against hazards and to psychologically create a better working atmosphere.

No one ever lacked for food on board a river towboat. Since the 1950's, it has become quite common to eat that food in an air conditioned messroom. Sleeping quarters have also been air conditioned, and recently the pilot house and galley have been included on many towboats. Where only cards and magazine reading were available in the past, now color TV is becoming common.

These and many more living comforts promote efficiency on the job.



A type of bow thruster unit.



Typical messroom facilities.



Modern towboat lounge area.

Productivity

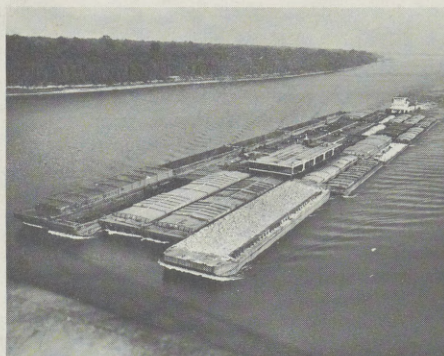
The preceding discussion has dealt largely with developments in towboat design over the last forty years. These developments have either been precipitated by developments in barge design and fleet handling or have led to further developments in these areas.

In the 1940's, the standard hopper barge was 175 feet long, 26 feet wide, and 10 feet-8 inches deep. This barge had a normal loaded capacity of about 930 tons. Today, the usual hopper barge measures 195 feet in length, 35 feet in width, 12 feet in depth, and has a normal loaded capacity of about 1,480 tons. In addition, there is a definite trend toward the use of 200-foot barges. Normally, the standard hopper barge of today will have one rake end and one box or square end. Some owners of large fleets however are now purchasing barges on which both ends are square ends. This innovation increases both the carrying capacity of the barge and the speed of the fleet in which the barge is towed. The increase in fleet speed is due to a reduction in fleet resistance brought about by what is called integration of the fleet. The principle here is simply an attempt to have a better continuity of water flow under the many barges that make up the fleet.

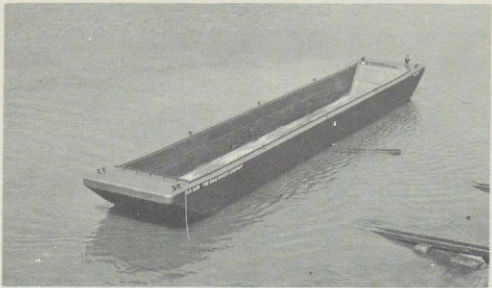
The growth in the size of barges has been matched by an increase in the number of barges being towed in a single fleet. In the 1940's, a fleet of fifteen 175' x 26' x 10'-8" barges was a large fleet even on the lower Mississippi River. Larger fleets were pushed on occasion, but not as a regular thing under normal operating conditions. Today, fleets of 30 and 35 barges of the 195' x 35' x 12' type are seen regularly on the lower Mississippi. On the Ohio and other rivers where the fleets must pass through locks, the size of the larger fleets range from 15 to 17-195' barges.

During and prior to World War II, the great majority of the tonnage moving in barges was iron and steel, petroleum products, and dry bulk materials such as coal and sand and gravel. Since that time, chemicals of all kinds, grain, sugar, salt, cattle, cement, paper, automobiles and many other products have been added to the list of commodities that are being moved by barge. From 1948 to 1964, the tonnage moved per year on the U. S. inland waterway system (exclusive of the Great Lakes) has increased from 262,282,074 tons to 457,495,630 tons.

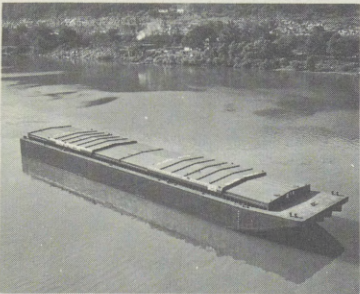
A more significant measure of the output of this inland transportation system is the number of ton-miles moved in a year. The unit is simply what the title implies in that it is the movement of one ton of cargo one mile. In the same 16 year period noted above, the ton-miles of cargo moved per year increased from 34,548,917,000 to 144,230,677,000, a total gain of about 300%. Comparing the total tonnage figures to the ton-mile figures indicates quite clearly that cargoes are being moved much longer distances than they were in 1948.



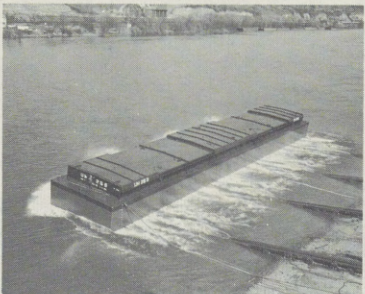
Present-day common carrier tow of average size.



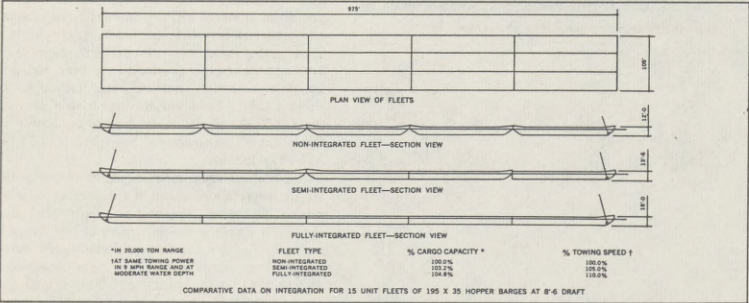
Standard open hopper barge, 175' long x 26' wide.

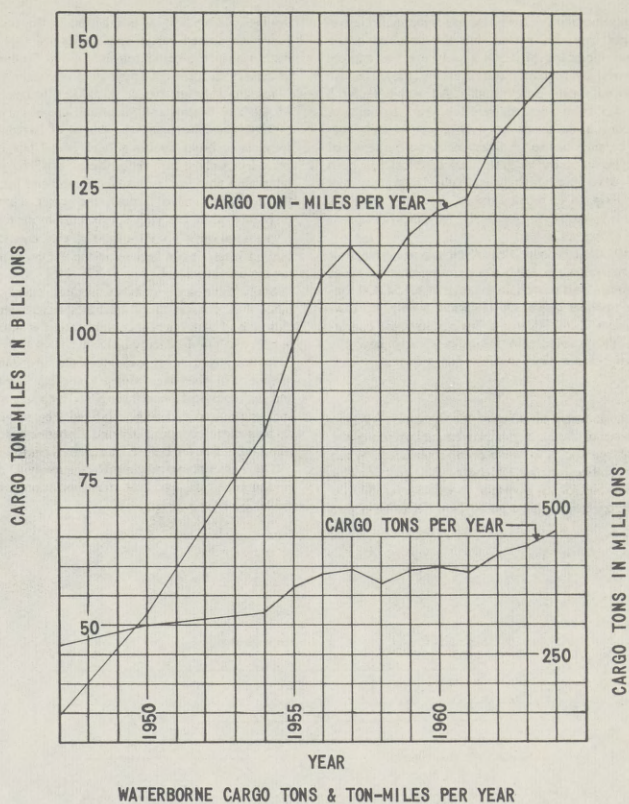


Semi-integrated jumbo barge, 195' long x 35' wide.



Square-ended jumbo barge, 195' long x 35' wide.





(Compiled by American Waterways Operators, Inc. from U. S. Army Corps of Engineers' data.)

The total number of towboats has remained relatively constant over this period, but the installed horsepower has increased 80%. Not only are the cargoes being moved over greater distances but they are also being moved much more rapidly. An active research program has been pursued over the years to improve the hull form of barges as much as is economically possible. A balance has to be found between barge speed and carrying capacity. A great deal of effort has been made in developing high-speed, fully-integrated tows that are designed to move cargoes over long distances without any stops in between for picking-up or dropping-off barges.

In 1940, the towboat "Peace" moved an average of 250,000 ton-miles per towboat operating day. In 1966, a 3200-hp towboat moved an average of 1,154,000 ton-miles per towboat operating day while a 6400-hp towboat averages 2,269,000 ton-miles per towboat operating day. This comparison indicates clearly how the productivity of a typical towboat has grown.

Future

What is the industry thinking of for the future? Where are other opportunities for improvement? Actually the river industry expects to move even larger fleets. When all lock chambers on the Ohio are 1200 feet long, it will be possible for an operator to move over 53,000 tons of cargo from Pittsburgh to New Orleans in one

double-locking fleet. It is inherent in the economics of power consumed versus speed obtained that the larger fleets return the better ton-mile costs. Studies are now underway to solve the application of higher horsepower—ranging between 10 and 12,000—to river towboats. Methods of fleetings and maximum use of cargo cubic or tonnage are influencing the design of barges. A recent trend is to build double square ended barges. Over a period of only a few years these "box" barges will be integrated with the barges having one end raked so that the fleets will move through the water with less total resistance while carrying appreciably more tonnage.

Automation will continue to receive considerable attention where it can best serve the net economics of the towing operation.

Such "blue-sky" ideas as nuclear energy, gas turbines and surface effect machines have been watched closely and when a proper application is apparent, the industry will undoubtedly be ready.

In the meantime research projects are underway by members of the river industry seeking improvements and technological breakthroughs. Towboats and barges are continuously being modified to move existing cargoes more economically and to better accommodate commodities never before transported on the rivers.

These technological improvements will insure the continuance of low cost transportation offered the public by river carriers.

Senator PEARSON. Mr. Hershey, what is your problem, now?

Mr. HERSHEY. I would like to put in the record a rather comprehensive statement of the problems and what the industry has done in the past to implement the technology improvement that Mr. Struble has described and the roadblocks which we now find ourselves up against.

Senator PEARSON. Your entire statement will be made a part of the record. Would you like to summarize it at this time?

Mr. HERSHEY. If I may, I would like to start reading my statement and if I see we are running short of time—

Senator PEARSON. We are not going to run short of time. The Senate went into session at 10 o'clock. I may have to jump up and dash out and come back. I had a chance in the early morning hours to take a very quick glance at your statement. I recall on pages 8 and 9 that you define the problem very very well, but I want you to proceed as you see fit, and we are going to have time to hear you.

Mr. HERSHEY. Thank you very much.

My name is J. W. Hershey, president of American Commercial Lines of Houston, Tex. and Jeffersonville, Ind. I appear on behalf of the Common Carrier Conference of Domestic Water Carriers, a group of the leading ICC-regulated common carrier inland, Great Lakes, coastal, and intercoastal water carriers.

Appearing with me today are: W. J. Barta, president, Mississippi Valley Barge Line Co., St. Louis; Charles E. Walker, president, Union Barge Line Corp., Pittsburgh; Harman T. Pott, president, Federal Barge-St. Louis Ship, St. Louis; F. A. Mechling, executive vice president, A. L. Mechling Barge Lines, Joliet, Ill., who is also appearing on behalf of American Waterways Operators; George E. Peterkin, president, Dixie Carriers, Houston; Howard King, president, Arrow Transportation Co., Sheffield, Ala.; Capt. David Parker, president, Sioux City & New Orleans Barge Lines, Houston; Floyd Blaske, president, American Commercial Barge Line Co., Jeffersonville, Ind.; Chauncey G. Willis, Jr., president, C. G. Willis, Inc., Paulsboro, N.J., and chairman of the Executive Committee of the Common Carrier Conference, Neville Stone, Southern Barge Line, and chairman of the Board of American Waterways Operators, Paducah, Ky.; F. E. T. Thompson, president, Coyle Lines, New Orleans; Lew S. Russell, Tidewater Barge Lines, Portland, Oreg.; L. R. Fiore, president, the Ohio River Co., Cincinnati; and Louis Igert, Jr., Igert, Inc. Paducah, Ky.

I want first to express the appreciation of the industry to the chairman and members of this committee for their expeditious handling of the problem facing us. We particularly appreciate the promptness with which you have scheduled hearings. As Senator Magnuson told you, we are up against a deadline. Ours is indeed an emergency situation. We have been notified by the Interstate Commerce Commission this month that we have a deadline of January 1, 1968, by which we must conform to what Senator Warren G. Magnuson has called the archaic and restrictive phrasing of section 303(b) of the Interstate Commerce Act. Now, the real problem we have as a result of a long series of interpretations since the section was adopted in 1940, the barge lines, as a practical matter, will have to break up economical large volume tows into separate smaller tows of regulated commodi-

ties, such as steel, paper, bags of sugar, and nonregulated dry bulk commodities, such as grain, coal, and sand. Moreover, even solid towloads of dry bulk will be limited to no more than three commodities. Common carriers can no longer expedite service through hiring nonregulated barge lines to deliver and gather barges for them at junction points on the main rivers, although this practice was specifically authorized until 1957.

I don't usually ask my competitors to move my barges around, but Mr. Barta has agreed to move the illustration around for me.

In any event, we are depicting on the top a 35-barge tow which is composed in this instance of four separate bulk commodities; that is, commodities susceptible to the exemption and a various number of non-exemption commodities which under all circumstance are regulated as of January 1, 1958. As a result of the recent court case, that tow will have to be split up as Mr. Barta will now change the mythical bargeline here to conform to the law as we will have to do it at the end of this year. What he is doing is really two things. First of all, he is separating the nonbulk from the bulk commodities, and then moreover he is also complying with the three commodity limitation on the bulk commodities by putting not more than three or in this case exactly three different bulk commodities in one tow, but he is still illegal at this point because—I mean in order for him to be illegal, he is placing one more commodity on there. The only way he could handle that and be legal would be to operate that by itself with a separate bulk. So we have a situation here, Senator, where as one boat could very easily and economically have moved all that cargo as a physical matter and prior to the final interpretation of the old law. We now have a situation where three boats would have to be used. It is obvious that the economy of that operation is very, very poor, and in order to move the cargo, there would have to be a substantial rate increase on some cargo or other in order to survive financially.

I might also say that, not to unduly complicate the matter, as it now stands if you will look at the middle tow, if that is coming down the river and there is a barge of sulfur moving as on unregulated basis, it is impossible to take any one barge of the bulk commodity and hitch it on to a regulated commodity tow. By the same token, it is also impossible to put any one of the regulated commodities—that is from the middle tow—up to either the first one or the third one.

That we hope fairly well explains not only the complication of the problem but the dire effects that would result if it is not remedied.

Senator PEARSON. What is your traffic situation on the inland waterways? I will be frank. My great interest is in aviation, and we have tremendous problems there. What is the traffic problem on the waterways, Mr. Hershey?

Mr. HERSHEY. Well, we have on the waterways carriers, which of course—

Senator PEARSON. What are your problems?

Mr. HERSHEY. Great congestion. I assume you are thinking about the congestion situation and the matter of controlling traffic, is that right?

Senator PEARSON. Yes. It just occurred to me when you have one barge and then replace it by three under the existing regulations, you have three barges out there on the river, and I would really inquire

in a very general way what the traffic situation was, what the traffic problems are.

Mr. HERSHEY. You are quite correct. From a traffic standpoint, we have a more complicated situation the more tows we have. From the locking situation, it is more efficient to operate a lock if you have a full-sized tow than if you have to go through with a number of small tows.

The area of congestions are of course primarily areas around the locks, where two waterways join each other, and areas around industrial cities.

The growth of the waterways has been so stepped up, congestion does take place. However, the increase in the size of the tows has upped the growth of the congestion which otherwise would take place.

Senator PEARSON. The traffic is not a great problem.

Mr. HERSHEY. I would say it is not a most critical point. There are some more critical points which relate to locks, which are obsolete. On the Ohio, as you well know, there is a massive program for the replacement of all locks by larger locks.

If you have no questions, about the physical problem there, I will go on with my statement.

Senator PEARSON. I just got a message that we are going to have to vote on an amendment to the NASA bill. You may go ahead with your statement.

Mr. HERSHEY. Breaking up the large-volume, low-unit-cost tows will cancel the effect of many years of vigorous technological innovation. Costs will go up; rates will have to go up. No one wants that. But that is precisely what will happen if we do not find a solution before January 1, 1968.

We are here today to support S. 1314, a simple solution to the problem. We will demonstrate the public interest benefits of the proposal.

Mr. L. P. Struble, Jr., of the Dravo Corp., a leading innovator of shallow-draft equipment, has briefly described for you the main developments of river transportation technology in modern times. In dozens of ways through Dravo and other shipyards on the river system, the industry has applied its energy, imagination, and inventiveness to increasing the productivity of its operations.

The operating efficiencies resulting from this improved technology can be clearly demonstrated. We have surveyed the five principal common carrier pioneers of the big towboats, American Commercial, Federal, Mechling, Mississippi Valley, and Union, to give the committee a useful insight into the impact of the new technology.

In 1955, for operations on the Ohio-Mississippi system, the average load per tow was 14,400 tons. Last year, the average tow load had risen to 29,600 tons, more than double, with individual tows ranging over 40,000 tons, or four times the capacity of a Liberty ship. In the U.S.-flag offshore dry bulk trades, there are no ships having a capacity greater than 40,000 tons, and only 20 tankers having a capacity greater. On the Great Lakes, the most efficient ore carriers will transport up to 27,000 tons of cargo.

Stated another way, the average towboat in 1955 of the companies studied produced 1,505,000 cargo ton-miles per boat-operating-day. Last year the average had more than doubled to 3,310,000 ton-miles per boat-day. The largest towboats have, on occasion, achieved up to 8,000,000 ton-miles a boat per day.

Improved productivity has enabled the bargelines to offset increases in the costs of labor and materials and even achieve substantial reductions in freight rates. A study of the rates of the five carriers listed above shows that average per ton revenue in 1960 was \$2.56 and that in 1966 it was \$2.31, a 10-percent reduction. Average revenues per ton-mile showed even greater reductions. In 1960, average revenue per ton-mile of the five carriers studied was 3.76 mills. In 1966, it was 3.1 mills per ton-mile, a reduction of 17 percent.

The new technology has made possible similar economies throughout the industry. Indeed, average revenues per ton-mile are now approximately what they were in the 1920's although the consumer price index since that time has almost doubled.

I stress these figures because I want to emphasize that the benefits of the new technology have already been passed on to the consumers. A reversion to the technology of 10 years ago will mean that the shippers and consumers using and benefiting from low-cost transportation on the inland waterways will be deprived of economies which they are now enjoying.

About 9 percent of the total intercity freight service of the country moves on the Nation's inland waterways. Hence the savings of the new technology have significance for the entire economy, but especially for shippers of pipe, steel plate, coal, grain, ore, petroleum, fertilizers, sugar, paper, rubber, chemicals, building aggregates, and many other commodities adapted to river movement. Unless the bargelines can continue to apply the new technology, these shippers and consumers will be adversely affected.

The dramatic successes of the inland river operations in improving productivity may be more startling than the improvements achieved by other branches of the industry, but it has been along the same general lines. In the past 10 years we have seen larger railroad freight cars, larger airplanes, larger bulk freighters, larger tankers, and, of course, larger diameter pipelines—all these innovations. All these innovations have the same basic objective: larger volume shipments to make possible lower unit costs and to help offset rising costs of labor and materials.

The critical importance of encouraging improved productivity in our economy is widely recognized. Better productivity constitutes an extremely effective counter to inflationary pressures resulting from increased wage and material costs. Increased wages produce increased standards of living only if they are not offset by rising prices. If industry can make more effective use of labor, then the wage increases granted will, in the end, result in an increasing standard of living.

The anti-inflationary contribution made by improved river technology is one benefit. An equally important benefit has been the contribution it is making to sound overall growth in the economy. More efficient use of available resources is a source of sound growth in the economy, just as formation of new capital for investment is an important source of growth.

For all of the enthusiasm of the barge operators for the new technology and their willingness to invest in radically new and more expensive equipment in the past 10 years, a serious problem has existed over the phrasing of the so-called dry-bulk exemption, section 303 (b), which defines conditions under which river transportation is exempt

from regulation. In brief summary, under the latest interpretations, the exemptions work as follows:

In determining whether—

Senator PEARSON. Let me interrupt you right here. Mark your place there and let this subcommittee stand in recess subject to the call of the Chair which I think will take about 10 minutes. Then if you will just bear with me, I will go and vote and then I will be right back.

(A recess was taken.)

Senator PEARSON. Mr. Hershey, would you like to resume where you left off?

Mr. HERSHEY. Yes, thank you, Senator. I have gone through this in your absence and again in the interest of time since some of these points have been covered by Commissioner Tierney and also by Mr. Struble and Senator Magnuson, there are a few which I will read.

(The rest of Mr. Hershey's prepared statement follows:)

In determining whether a bargeload is subject to regulation a distinction is made between dry bulk commodities, such as grain, coal or sand, transported without mark or count and non-bulk commodities, such as steel pipe and packaged sugar, which can be marked and counted. A tow of three or less dry bulk commodities is exempt; the addition of a fourth dry bulk or any non-bulk commodity subjects all barges in a towload to regulation.

The present difficulty is how to apply modern technology in transportation, with the maximum public interest advantages in terms of cost and service, in a situation where part of the business is regulated by the I.C.C. and part is exempt from regulation.

I might say first that those who have not looked into the situation very deeply will ask us why we don't publish all our rates and make all the commodities we carry subject to regulation. We are allowed to mix any number of regulated commodities in a tow. Everett Hutchinson, then chairman of the I.C.C., explained in 1961 why this alternative is not open to us. If we published all our rates, he said, "the advantage thus gained by the unregulated carriers becomes readily apparent. They need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. This is a one-way street for the regulated carriers have no way of ascertaining the rates charged by the exempt carriers, who are not required to publish rates." Since bulk exempt traffic represents 90 per cent of the total business, if the regulated carriers want to continue in the river trades, as a practical matter, they must compete on the same terms as the exempt carriers.

The barge lines have tried to solve the problem a number of other ways without reference to Congress, but each time they have run into a stone wall, I will not attempt here to repeat in detail the legal history of the struggles the common carrier barge lines have been through to fit modern operating efficiencies to interpretations of an Act written at a time the new technologies had not been conceived. We have been chiefly concerned with two limitations on efficiency:

Denial of the right to expedite service by hiring non-certificated barge lines to gather and distribute barges at junction points on the main rivers; and

Denial of the right to accumulate regulated and non-regulated traffic in a single tow to achieve volume movements at low unit costs.

Section 303(b) appeared sufficiently flexible to meet the needs of water commerce at the time it was passed in 1940. Indeed, there was nothing intrinsic in the wording which required the kind of interpretations that have been placed on it. But as the technology advanced, the ICC and the courts, over 27 years, eliminated the flexibility of the language of the Section and narrowed it down to a degree of inflexibility which today leaves no room at all for modern technology.

For example, common carriers used non-certificated carriers to deliver and assemble regulated non-bulk traffic at junction points under a letter of authority from the I.C.C. issued in 1944. The letter was rescinded in 1957 and the interpretation narrowed at precisely the time it became highly useful.

Again, the Section says there shall be no more than three bulk commodities in a tow if it is to remain exempt. The addition of a non-bulk commodity

did not seem to be caught by this language any more than the addition of a pear to two apples makes three apples. But, by interpretation, the definition was narrowed so that if an otherwise exempt towload of bulk barges, including three or fewer commodities, added a barge of regulated steel or regulated paper on its way down the river, the exemption for the entire tow was lost.

Still again, under the Act, towing tariffs, as distinct from affreightment tariffs, are also subject to regulation. There is nothing in the language of the Act or any discernible public policy which appears to prevent anyone, including non-certificated carriers, from hiring towing services from a regulated barge line and paying the published rate for towing. The resulting tow should be a fully regulated tow in which the question of mixing does not arise. But an interpretation again narrowed the meaning of the Act and this solution was thrown out.

Little by little, the flexibility of the exemption applied to dry bulk traffic has been whittled away. By contrast, the liquid exemption, Section 303(d), has remained completely flexible. The exemption of liquid commodities is not affected by the number of commodities in the tow or by whether some are bulk and some are non-bulk. Liquids are exempt from rate regulation without qualification.

In fairness, it should be said that the question of mixing regulated and unregulated commodities in a single tow was not an issue of importance until the revolution in power took place in the mid-1950s. It was the advent of larger towboats in 1955 and the possibility of larger volume tows which raised the question. At that time, the barge lines themselves asked the Commission for clarification. It was a fatal question to ask. The Commission responded by finding the Section to be completely inflexible.

The barge lines brought the problem to the Congress in 1961. The matter was explored in hearings before the Committee on Commerce on June 9th and August 7th of that year. There was no resolution of the issue at that time, primarily, I suspect, because the barge lines had at that time not exhausted all their remedies in court. We were then still hopeful that a court might restore some of the flexibility which we believed originally existed in the Act. At the same time, the hearings revealed a lack of unanimity in the water carrier industry and among the shippers using water carriage.

The situation is different today.

Since 1961, our case has been fully heard by the courts and our judicial remedies finally exhausted. A decision of the United States District Court of the Southern District of Texas last year made this comment:

"If, as argued so strenuously, this application of Section 303(b), brings about transportation inefficiencies which discriminate against regulated carriers of bulk commodities, or regulated tows, or both, the remedy is to be with Congress. Through the Commission and otherwise it has been made aware of these problems and their possible consequences. If Congressional handiwork now produced unwanted results it is for Congress, not the Judiciary, to right the machinery."

Following an appeal to the Supreme Court, the lower court's decision upholding the I.C.C.'s decision was affirmed (18L. Ed 98 1967).

After completely exhausting their legal remedies, the barge lines now come before the Congress with a proposal that has the full support of all segments of the water carrier industry and labor. We do not, today, have a divided industry. Equally important, we have the support of the major shippers of water-borne commodities, as well as the support of numerous small businessmen who depend on efficient common carrier services for the economical operation of their businesses.

One of the goals the barge lines set themselves in developing the proposal now before you was to make as small a change as possible in the law. Our aim is to permit continuation of the present technologies and efficiencies which are so obviously in the public interest and to change present practices as little as possible.

We were struck by the fact that there is no logic or legislative history to justify making the dry-bulk exemption conditional on other commodities in the tow. Why should a 30-barge tow suddenly lose its exemption because another barge is added on a trip down the river? There is no sensible answer to this question.

Chairman Magnuson and Senator Hartke have proposed a solution in S. 1314. The sentence which causes all the trouble in Section 303(b) is the one reading as follows: "For the purpose of this subsection two or more vessels while navigated as a unit shall be considered a single vessel." Without this sentence the dry-bulk exemption would have almost, but not quite, the same flexibility as the

liquid exemption. A barge would be considered a vessel and the prohibition would then mean that no more than three commodities could be mixed in a single barge. If, as Justice Oliver Wendell Holmes said, the life of the law has been experience, the experience of 27 years of river operations suggests that this change makes sense.

Instead of blocking progress, lower transportation costs, and more efficient service, the Section would then encourage progress, promote technological innovation, encourage lower freight rates, and better transportation service.

For shippers, of course, it will mean the continuation of the savings that have already been passed along to them as a result of the new technology. It means assurance that future technological improvements can also be applied without legal impediment or restraint.

We had reason to hope that there would be no opposition to this measure. There is none from the trucking industry, the pipeline industry, the airlines, the shippers, the farmers, or the Government. We have been informed that the railroads alone are planning to oppose. It is our belief that the railroad interest is not materially affected.

We base our position on three premises.

1. It is a mistake to assume that what is good for river traffic is bad for railroads. Earlier this year, the employee magazine of the Illinois Central Railroad, which is surely more competitive with river traffic than any other railroad in the nation, had words of praise for the industrial complex which has grown up between Baton Rouge and New Orleans on the Lower Mississippi River. The Illinois Central has achieved much new traffic from the development which would not have located where it has but for the ready access to the river.

This reinforces an earlier statement of the I.C. made in 1923 and often quoted as putting the rail-water rivalries in proper perspective:

"The Illinois Central, of course, recognizes that the barge line offers competition paralleling it on the Mississippi River, but our interests are clearly identified with the interests of the people in the Mississippi Valley.

"We have regarded the inauguration of this service on the Mississippi River as more or less experimental. I do not believe anybody knows whether it can be permanent. A great many people have faith in its permanency, but if it is a good thing for the people of the Mississippi Valley, it, in some way, will probably operate as a good thing for the Illinois Central system.

"If it supplies additional transportation that is needed, and may be needed in the future, that we can not supply, or if it supplies cheaper transportation than we can supply, and all for the prosperity of the people in that section of the country where our interests are bound up in some way, that will work back to our own selfish interests. Perhaps it will increase the population, increase the amount of business that everybody does down in that territory. If it does operate that way, we are going to reap some benefit, too."

River navigation has been good for the people of the Mississippi Valley; it has also been good for the Illinois Central. In the last 30 years, the barge lines have achieved a major role in the national economy and the I.C. has prospered. Compared to 1936, its growth has far out-distanced the record of the railroad industry generally. Revenues of Class 1 railroads as a whole have increased 169% in 30 years; the I.C.'s have increased 191%. Tonnage of Class I railroads is up 52% over 30 years; the I.C.'s tonnage is up 99%.

2. Let us assume the worst. S. 1314 fails and common carrier barge line costs are artificially increased. Traffic lost to common carrier barge lines would not go to railroads. The large shippers on the river would be more likely to turn to an expansion of private water carriage. The difference in costs are such that there is a powerful incentive for large shippers to go into private carriage. The small shipper of the occasional barge load would be cut out of his markets entirely; most of his traffic could not bear the higher rail tariffs.

3. The railroads have argued in the past that equity requires that exemptions for river carriers should be matched by exemptions for railroads. The argument overlooks one critical difference. Exemptions are accompanied by complete freedom of entry into the transportation business. This results in a severity of competition unknown in railroading. The railroads do not propose freedom of entry into railroading. They have a tremendous advantage in monopoly control of the right of way which they own and this advantage balances off at least part of the inequity, if there is one.

If their purpose is simply to load artificial handicaps on a competitor, it seems to us they are in the same position we would have been in if we had opposed rail-

road mergers on the grounds that cost savings would damage our competitive position. Barge lines did not oppose the mergers. For the same reason, railroads should not oppose S. 1314.

We have approached our problem pragmatically. The solution makes the least change possible in the law and at the same time permits realization of the public benefits of modern technology. An alternative solution would be to repeal all the exemptions, and give the present exempt carriers grandfather rights to continue in their present business. This would be a very major change. Any consideration of such a change should be separate and apart from a consideration of S. 1314.

The inland waterway common carriers have traditionally supported repeal of the exemptions. I think we can take for granted, however, that any move in that direction today would precipitate another bitter and protracted dispute. The water carrier industry would again be sharply divided, assuming that the common carriers maintained their traditional position on the subject. The shippers would be divided, but overwhelmingly against. I am not even sure where the railroads would be. It is hard to see how the railroads could argue for rate increases and, at the same time, for repeal of regulation. It is possible the railroads would be split on the question. Government agencies differed among themselves the last time the proposal was seriously discussed. The Department of Agriculture favored further exemptions. The I.C.C. wanted repeal of the exemptions. I hope I have said enough to demonstrate that any proposal to cure this problem by proposing the repeal of the exemptions would precipitate a lengthy fight. The urgent relief the barge lines need would be lost in the struggle of large contending armies.

One other modernization is included in S. 1314. A provision in Section 303 (b) restricts the exemption to commodities carried "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939." This has lost its meaning since the I.C.C. found that alumina, a new commodity to the rivers, was entitled to the exemption. (325 ICC 745) Since new commodities make their debut frequently, there is no need to keep the reference in the Section. It is better deleted.

The problem of the inland water carrier is essentially a simple one. The barge lines have developed an improved technology which has resulted in better service at lower rates. It is in the public interest to continue to apply this new technology and to encourage further improvements. S. 1314 accomplishes this purpose. It merits adoption.

Again, I would like to emphasize how much we appreciate the fact that this Committee has set down the issue for early hearings. We hope S. 1314 will be favorably recommended to the full Committee and passed by the Senate in time for action in the House before the deadline set for us by the I.C.C. which, I will repeat, is January, 1968, only six short months away.

Mr. HERSHEY. I might say first that those who have not looked into the situation very deeply will ask us why we don't publish all our rates and make all the commodities we carry subject to regulation. We are allowed to mix any number of regulated commodities in a tow. Commissioner Everett Hutchinson, then Chairman of the ICC, explained in 1961 why this alternative is not open to us. If we published all our rates, he said, "the advantage thus gained by the unregulated carriers becomes readily apparent. They need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order to obtain the traffic. This is a one-way street for the regulated carriers have no way of ascertaining the rates charged by the exempt carriers, who are not required to publish rates." Since bulk exempt traffic represents 90 percent of the total business, if the regulated carriers want to continue in the river trades, as a practical matter, they must compete on the same terms as the exempt carriers.

The bargelines have tried to solve the problem a number of other ways without reference to Congress, but each time they have run into a stone wall. I will not attempt here to repeat in detail the legal history of the struggles the common carrier bargelines have been through to

fit modern operating efficiencies to interpretations of an act written at a time the new technologies had not been conceived. We have been chiefly concerned with two limitations on efficiency:

Denial of the right to expeditious service by hiring noncertificated bargelines to gather and distribute barges at junction points on the main rivers, and I might say, Senator, that when we looked into this question a number of years ago, we found three or four large common carriers have used during the previous period as many as 75 or 80 smaller carriers in order to aid them in bringing barges from offline points and towing out barges in various sections of the waterways. This was a way of improving the efficiency and giving some business to the small carriers. This we no longer can do.

The other limitation was the denial of the right to accumulate regulated and nonregulated traffic in a single tow to achieve volume movements at low unit costs.

Section 303(b) appeared sufficiently flexible to meet the needs of water commerce at the time it was passed in 1940. Indeed, there was nothing intrinsic in the wording which required the kind of interpretations that have been placed on it. But as the technology advanced, the ICC and the courts, over 27 years, eliminated the flexibility of the language of the section and narrowed it down to a degree of inflexibility which today leaves no room at all for modern technology.

For example, common carriers used noncertificated carriers to deliver and assemble regulated nonbulk traffic at junction points under a letter of authority from the ICC issued in 1944. The letter was rescinded in 1957 and the interpretation narrowed at precisely the time it became highly useful.

Again, the section says there shall be no more than three bulk commodities in a tow if it is to remain exempt. The addition of a nonbulk commodity did not seem to be caught by this language any more than the addition of a pear to two apples makes three apples. But, by interpretation, the definition was narrowed so that if an otherwise exempt towload of bulk barges, including three or fewer commodities, added a barge of regulated steel or regulated paper on its way down the river, the exemption for the entire tow was lost.

Still again, under the act, towing tariffs—

Senator PEARSON. Mr. Hershey, let me ask you a question. Is it the usual procedure and custom that each barge will carry a single type of commodity or item of material? Are there cases where you have?

Mr. HERSHEY. It is very rare. It is very rare that one barge will handle more than one bulk commodity. Barges do not have any between decks in them and they ordinarily do not have baffles or bulkheads in the cargo hold.

Senator PEARSON. So you would not end up with an exempt commodity and a nonexempt commodity on the same barge as a practical matter?

Mr. HERSHEY. Very, very rarely.

Under the act, towing tariffs as distinct from affreightment tariffs, are also subject to regulation. There is nothing in the language of the act or any discernible public policy which appears to prevent anyone, including noncertificated carriers, from hiring towing services from a regulated bargeline and paying the published rate for towing. The resulting tow should be a fully regulated tow in which the ques-

tion of mixing does not arise. But an interpretation again narrowed the meaning of the act and this solution was thrown out by the fifth circuit affirmed by the Supreme Court in March of this year.

So little by little, the flexibility of the exemption applied to dry bulk traffic has ben whittled away. By contrast, the liquid exemption, section 303(b), has remained completely flexible. The exemption of liquid commodities is not affected by the number of commodities in the tow or by whether some are bulk and some are nonbulk. Liquids ar exempt from rate regulation without qualification.

Senator PEARSON. Will you explain that? I think counsel put a question to Mr. Tierney and he was going to supply us with an answer. Would you like to comment there on the difference between the liquid and the nonliquid commodities?

Mr. HERSHEY. Simply stated the liquid exemption is an exemption which is described principally as one of applying to liquid which moves in a tank barge as certified by the Coast Guard.

Senator PEARSON. Just as the language is stated in the two sections?

Mr. HERSHEY. Completely. But what this proposed bill would do would be in a sense to make the dry bulk exemption as absolute as the liquid exemption.

Senator PEARSON. Thank you.

Mr. HERSHEY. In the decision which has finally closed the last door to us as far as any relief which I referred to a few minutes ago, the southern district of Texas, this comment appears:

If, as argued so strenuously, this application of Section 303(b) brings about transportation inefficiencies which discriminate against regulated carriers of bulk commodities, or regulated towers, or both, the remedy is to be with Congress. Through the Commission and otherwise it has been made aware of these problems and their possible consequences. If Congressional handiwork now produced unwanted results, it is for Congress, not the Judiciary, to right the machinery.

That is about the only thing we got out of that decision, Senator.

Senator PEARSON. As a lawyer you ought to be grateful for that. I have had more adverse decisions.

Mr. HERSHEY. After completely exhausting their legal remedies, the bargelines now come before the Congress with a proposal that has the full support of all segments of the water carrier industry and labor. We do not, today, have a divided industry. Equally important, we have the support of the major shippers of waterborne commodities, as well as the support of numerous small businessmen who depend on efficient common carrier services for the economical operation of their businesses.

One of the goals the bargelines set themselves in developing the proposal now before you was to make as small a change as possible in the law. Our aim is to permit continuation of the present technologies and efficiencies which are so obviously in the public interest and to change present practices as little as possible.

Chairman Magnuson and Senator Hartke have proposed a solution in S. 1314. The sentence which causes all the trouble in section 303(b) in the one reading as follows: "For the purpose of this subsection two or more vessels while navigated as a unit shall be considered a single vessel." Without this sentence, the dry-bulk exemption would have almost, but not quite, the same flexibility as the liquid exemption. A barge would be considered a vessel and the prohibition would then

mean that no more than three commodities could be mixed in a single barge.

Instead of blocking progress, lower transportation costs, and more efficient service, the section would then encourage progress, promote technological innovation, encourage lower freight rates, and better transportation service.

For shippers, of course, it will mean the continuation of the savings that have already been passed along to them as a result of the new technology. It means assurance that future technological improvements can also be applied without legal impediment or restraint.

We had reason to hope that there would be no opposition to this measure. There is none from the trucking industry, the pipeline industry, the airlines, the shippers, the farmers, or the Government that we know of. We have been informed that the railroads alone are planning to oppose. It is our belief that the railroad interest is not materially affected.

We base our position on three premises:

1. It is a mistake to assume that what is good for river traffic is bad for railroads. Earlier this year, the employee magazine of the Illinois Central Railroad, which is surely more competitive with river traffic than any other railroad in the Nation, had words of praise for the industrial complex which has grown up between Baton Rouge and New Orleans on the lower Mississippi River. The Illinois Central has achieved much new traffic from the development which would not have located where it has but for the ready access to the river.

This reinforces an earlier statement of the I.C. made in 1923 and often quoted as putting the rail-water rivalries in proper perspective:

They said in 1923:

The Illinois Central, of course, recognizes that the barge line offers competition paralleling it on the Mississippi River, but our interests are clearly identified with the interests of the people of the Mississippi Valley.

We have regarded the inauguration of this service on the Mississippi River as more or less experimental. I do not believe anybody knows whether it can be permanent. A great many people have faith in its permanency, but if it is a good thing for the people of the Mississippi Valley, it, in some way, will probably operate as a good thing for the Illinois Central system.

If it supplies additional transportation that is needed, and may be needed in the future, that we cannot supply, or if it supplies cheaper transportation than we can supply, and all for the prosperity of the people in that section of the country where our interests are bound up in some way, that will work back to our own selfish interests. Perhaps it will increase the population, increase the amount of business that everybody does down in that territory. If it does operate that way, we are going to reap some benefit, too.

It seems to us, Senator, on the river this statement was rather prophetic. What was proposed has now happened.

River navigation has been good for the people of the Mississippi Valley; it has also been good for the Illinois Central. In the last 30 years, the barge lines have achieved a major role in the national economy and I.C. has prospered. Compared to 1936, its growth has far outdistanced the record of the railroad industry generally. Revenues of class 1 railroads as a whole have increased 169 percent in 30 years; the I.C.'s have increased 191 percent. Tonnage of class 1 railroads is up 52 percent over 30 years; the I.C.'s tonnage is up 99 percent.

2. Let us assume the worst. S. 1314 fails and common carrier barge line costs are artificially increased. Traffic lost to common carrier barge

lines would not go to railroads. The large shippers on the river would be more likely to turn to an expansion of private water carriage. The difference in costs are such that there is a powerful incentive for large shippers to go into private carriage. The small shipper of the occasional barge load would be cut out of his markets entirely; most of his traffic could not bear the higher rail tariffs. And, of course, the small shipper has only one barge to ship his goods. He is not in a position to become a private carriage.

3. The railroads have argued in the past that equity requires that exemptions for river carriers should be matched by exemptions for railroads. The argument overlooks one critical difference. Exemptions are accompanied by complete freedom of entry into the transportation business. This results in a severity of competition unknown in railroading. The railroads do not propose freedom of entry into railroading. They have a tremendous advantage in monopoly control of the right-of-way which they own and this advantage balances off at least part of the inequity, if there is one.

If their purpose is simply to load artificial handicaps on a competitor, it seems to us they are in the same position we would have been in if we had opposed railroad mergers on the grounds that cost savings would damage our competitive position. Bargelines did not oppose the mergers. For the same reason, railroads should not oppose S. 1314.

One other modernization is included in S. 1314. A provision in section 303(b) restricts the exemption to commodities carried "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939." This provision has lost its meaning since the ICC found that alumina, a new commodity to the rivers, was entitled to the exemption (325 ICC 745). Since new commodities make their debut frequently, there is no need to keep the reference in the section. It is better deleted.

The problem of the inland water carrier is essentially a simple one. The bargelines have developed an improved technology which has resulted in better service at lower rates. It is in the public interest to continue to apply this new technology and to encourage further improvements. S. 1314 accomplishes this purpose. It merits adoption.

Again I would like to emphasize how much we appreciate the fact that this committee has set down the issue for early hearings. We hope S. 1314 will be favorably recommended to the full committee and passed by the Senate in time for action in the House before the deadline set for us by the ICC, which, I will repeat, is January 1968, only 6 short months away.

Thank you very much.

Senator PEARSON. Thank you very much, Mr. Hershey. We are very pleased to have you here and to have the benefit of your testimony this morning.

Senator Scott, do you have any questions you would like to ask?

Senator SCOTT. Mr. Chairman, I have a few here. I think you have already explained the necessity of Congress having to act before January 1, 1968, but would you explain by what procedures water carriers have been operating in recent years with mixed tows despite the language of section 303(b)?

Mr. HERSHEY. Yes, there are two methods since this problem became critical way back to the 1940's, by which we have managed to physi-

cally mix for the most part regulated and bulk freight. The first of these was by using the towing exemption which is contained in section 303-(f) (2), I believe, and this exemption provides that furnishing a service for a common carrier in performance of the common carrier's business is exempted from regulations. By this meaning common carriers were able to use outside carriers, bulk carriers so to speak, to tow in their tows in combination with their bulk traffic regulated commodities. In some instances, but not all by any means, the common carrier had subsidiaries who were exempt carriers, and so, therefore, the common carrier was using a subsidiary which was a bulk-exempted carrier to move some of its regulated traffic, its nonbulk traffic.

Senator SCOTT. Why would the broadening of the exemption in 303(b) create more efficient waterway traffic rather than the repealing of the section?

Mr. HERSHEY. Well, it's a very pertinent and germane question. No doubt about it. I do not believe that amending section 303(b) would result in any greater efficiency than repealing the exemption. However, experience over the past 6 or 7 years has demonstrated to us, and I am sure to Congress, that there is a tremendous public sentiment for the continuation of the bulk exemption. At the time that hearings were held on this subject in June and August of 1961, this question was asked at that time, and it was apparent then from the testimony that as a practical problem it did not seem that there was very much likelihood of the repeal or attempted repeal being successful.

Senator SCOTT. What portion of inland waterway traffic is bulk?

Mr. HERSHEY. The figures are not entirely accurate, because the nomenclature by which the statistics are kept. Somewhere between 85 and 90 percent of the entire traffic on the waterways is bulk.

Senator SCOTT. Am I right in construing S. 1314 as permitting the mixing in a flotilla of barges of both bulk exempt commodities and regulated commodities? Am I right? If I am right, what effect would this bill have on the transportation of liquid commodities?

Mr. HERSHEY. It has no effect at all on the transportation of liquid commodities.

Senator SCOTT. In your judgment would a provision allowing the Commission to establish regulations on mixing bulk and exempt commodities be sufficient to eliminate the problems you have stated? Could it be done?

Mr. HERSHEY. That is a rather difficult question to answer. May I ask, Does your question imply that the Commission would set out rules and regulations to determine the conditions under which there could be mixing?

Senator SCOTT. That is right.

Mr. HERSHEY. Well, I don't think this would be very effective. I think it would be difficult to administer because the number of combinations are very numerous. We have on the river, we have private carriers who operate as a private carrier in one direction or under certain circumstances moving their own commodities or commodities controlled by an affiliate, who then becomes an exempt-for-hire carrier in the reverse direction. We have bulk-exempt purely for-hire carriers. We have one or two permitted contract carriers of general commodities subject to ICC jurisdiction. We have the common carriers. This is in addition to the liquid carriers. We have a number of different types of

cargoes. We have different conditions of demands in that sometimes during the peak harvest there are not enough barges to go around. Emergency conditions might be said to prevail.

I would think trying to set up a system anytime a barge line wanted to mix a bulk and nonbulk commodity, they would have to go to the Commission and get a permit or involving themselves in interpretation of a complicated rule would be rather inefficient. I doubt if it would work out as well as the proposed suggestions here.

Senator SCOTT. That is all I have, Mr. Chairman.

Senator PEARSON. Mr. Hershey, you mentioned something about non-certificated affiliates, and I have reference to the testimony this morning of the ICC, whereby first in the ICC case, later in the Federal courts, this was declared in effect to be illegal. Am I correct about that so far?

Mr. HERSHEY. Yes; I think so. What actually happened was that they stated that the device—I don't know whether that is a very good word, but the mechanism developed trying to take advantage and using the towing exemption and did not have the legal result desired, and we would have to stop it. At that point we undertook a second method, and this was a method of utilizing a towing tariff. Under those circumstances instead of an unregulated carrier towing for a regulated common carrier, the common carrier towed bulk commodities for a bulk-exempt carrier.

Senator PEARSON. Let me interrupt you. The possible passage of S. 1314 isn't going to reverse *Gulf Canal Lines, Inc. v. United States* or the ICC; is it?

Mr. HERSHEY. It doesn't have the effect of reversing it. It simply makes those issues no longer of any practical importance.

Senator PEARSON. I want to ask counsel if he has any questions.

Mr. SENDER. Just one question and it is in response to one Senator Scott asked. You answered the second part, but not the first part of the question. It was as to your interpretation of S. 1314, whether or not you interpret that as permitting bulk commodities to be mixed with regulated commodities under the present wording of S. 1314?

Mr. HERSHEY. Yes; I do interpret that as permitting the mixing of bulk and regulated.

Senator PEARSON. Thank you very much, Mr. Hershey.

Mr. Barta, would you like to testify at this time?

Mr. BARTA. I have nothing to add to Mr. Hershey's testimony.

Senator PEARSON. Do you have a statement?

Mr. BARTA. No, I did not.

Mr. HERSHEY. I think Mr. Barta subscribed to my testimony. Do you, Mr. Barta?

Mr. BARTA. Yes, indeed.

Senator PEARSON. Thank you very much. Thank you, Mr. Hershey and gentlemen.

The next name I have is Mr. Mechling, who is the chairman of the Legislative Committee of the American Waterways Operators, Inc.

STATEMENT OF F. A. MECHLING, CHAIRMAN, LEGISLATIVE COMMITTEE, THE AMERICAN WATERWAYS OPERATORS, INC., WASHINGTON, D.C., ACCOMPANIED BY BRAXTON B. CARR, PRESIDENT, THE AMERICAN WATERWAYS OPERATORS, INC., WASHINGTON, D.C.

Mr. MECHLING. Thank you, Mr. Chairman. I would like to have with me at the witness table, Mr. Carr. I would like to have him join me at the table.

Mr. Chairman, in the interest of time and in view of the lateness of the hour, I would just ask that my statement be received and accepted and printed in the record, and I would just perhaps make a few brief comments about the position of the American Waterways Operators, Inc., in the interest of S. 1314.

Senator PEARSON. It is so ordered, Mr. Mechling. Your entire statement and exhibits thereto will be incorporated in the record as if given in full and you may proceed.

(The documents referred to follow:)

STATEMENT OF F. A. MECHLING ON BEHALF OF THE AMERICAN WATERWAYS OPERATORS, INC.

My name is F. A. Mechling. I am executive vice president of A. L. Mechling Barge Lines Inc., of Joliet, Illinois. I appear before this committee representing The American Waterways Operators, Inc. (AWO) to present testimony in support of the enactment of S. 1314, a bill introduced by Senator Warren G. Magnuson for himself and Senator Vance Hartke "to amend Section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein." I am a director of The American Waterways Operators, Inc., a regional vice president, and chairman of the Association's Legislative Committee. I served in the past as chairman of the AWO Board of Directors. The testimony I am about to present has been authorized by action of the Board of Directors and the membership of the Association.

First, I would like to explain for the benefit of the committee and for the record the characteristics of The American Waterways Operators, Inc. and outline the scope of its interests in the proposed legislation. AWO is a nationwide, voluntary, non-profit membership trade association with headquarters located at 1250 Connecticut Avenue (Suite 502), Washington, D.C. The Association has field offices in New York City and New Orleans. The Association has 206 members. One hundred sixty-nine of these companies own and operate towboats, tugboats and barges in the performance of transportation services over the inland waterways of the United States and in some cases offshore along the Atlantic, Gulf and Pacific coasts as well as in trade to and from Puerto Rico, Alaska and Hawaii. The other 37 companies who belong to AWO are shipbuilders, terminal operators serving barge commerce, and mid-stream service companies. Among the companies operating towboats, tugboats and barges are carriers performing regular route common carrier service under Interstate Commerce Commission certificates, carriers performing service in the transportation of commodities, both dry and liquid, which are exempt from ICC regulation, and carriers performing proprietary transportation.

I am proud to say, Mr. Chairman, that our segment of the transportation industry—the towboat, tugboat, bargeline industry—comes before the Congress united in its support of S. 1314.

I am proud to say also, Mr. Chairman, that the organization which I represent before the committee today, The American Waterways Operators, Inc., has had a part in achieving this position of unity for presentation to the Congress.

Very briefly may I point out to the committee that our industry and our Association has arrived at this position in which we are seeking enactment of S. 1314 after careful deliberation and after all avenues of operational and administrative remedy were exhausted.

Our industry has since the end of World War II been going through a continuing evolution in towboat horsepower capacity and design.

In the period 1945 to 1950 we went through an increase in horsepower per towboat from 800 to 1,000 horsepower, capable of pushing four to six barges with 5,000 up to 7,200 tons per tow. We then went to 1,800 horsepower and 3,200 horsepower boats capable of pushing 10,000 to 15,000 tons of cargo. Today, boats with 5,000 to 9,000 horsepower are operating on our rivers, pushing 30,000 up to 40,000 or 50,000 tons of cargo in a single flotilla of barges. The increase in the power and capability of our boats is caused by greater utilization of barge service by the public, which resulted in increased tonnage. Using ingenuity and available American know-how, the barge industry utilized technological developments to meet, economically and efficiently, the increased tonnage and to improve its service to the public. As the result of these activities, rates have been held down and actually are lower today than they were in 1945—over 20 years ago. Rate levels in the three mills per ton mile are the average today, while an average of almost four mills per ton mile was common in the middle 40's and early 1950's. For example, in 1941, the O.P.A. ceiling rates on the transportation of petroleum products on the inland rivers was three and three-quarter mills per net ton mile. Today, these same commodities are transported on the inland river system at rates in the two mills to two and one-quarter mills per net ton mile range.

We are proud of this record and what it has meant to reduce inflationary pressures on inland freight rates to the benefit of our entire economy. The results have been very effective in affording lower rates on grain for export to foreign markets to help in our delicate balance of payments problem and to assist our domestic industries in meeting foreign competition, by delivering to domestic markets by low-cost barge service. For example, steel mills in the Chicago area compete with foreign producers on the same products in the consuming markets located along the Lower Mississippi River and the Gulf Coast. Any increase in freight rates would permit further invasion of these domestic markets by foreign producers. Agricultural commodities produced in the heart-land of the Midwest reach world markets via the inland river systems to the deep sea ports for export. The continuous efforts to hold down the cost of transportation is mandatory to permit these products to enter and compete in these world markets and provide a reasonable return to the farmer for his efforts in producing these food products.

All of this progress, growth and development, is now threatened to be cancelled out as a result of a recent decision interpreting the application of the exemption of dry bulk commodities under Section 303(b) of the Interstate Commerce Act of 1940.

We cannot continue an arrangement which has permitted us to tow together in the same flotilla regulated barges of steel or other non-bulk commodities and barges moving under the exemption loaded with bulk commodities such as grain. Compliance with this decision will require us to separate tows of bulk and non-bulk.

To separate tows in the manner described will require an additional towboat to do the same job that can now be done with one 5,000 horsepower towboat and 12 men. This would in reality mean a doubling of the manpower to man the two vessels, as well as doubling the investment, to provide the same service. This would of course result in increased rates to the disadvantage of the shipping public. (See attached diagrams.)

The other alternative is to wait until sufficient barges of either exempt or regulated cargoes are accumulated to make up an economical size tow. The effect of this would be to delay sailings and cause a deterioration in the service to the distinct dissatisfaction of the shipper.

Any artificial increase such as described above would automatically dilute the value of low-cost barge service. The result would make it too costly for shippers who have geared their operations to the low-cost barge transportation to continue to utilize barge services. The disadvantaged shippers and receivers would have to find either alternative sources, such as purchasing from foreign sources; increase their cost of operation, or change their methods of operation. In any event, the result may well be disastrous to existing industry as now constituted.

None of these, of course, are in the public interest.

Bill S. 1314 as submitted will maintain and improve the ability of the water carriers to provide the most economical efficient service.

Regulated carriers will be able to mix all cargoes in large tows. They will also be able to tow exempt cargoes for unregulated for-hire carriers in the same tow.

Exempt carriers will be able to add to their large exempt tows, barges of regulated carriers moving on the tariff rates and rights of the regulated carriers. This will provide better service for the shipper in expediting the movement of regulated cargoes and at the same time keep down the unit cost of transporting all the cargoes in the same tow, by making full utilization of the technological developments, permitting the provision of efficient and economical service.

In short, this provides a complete flexibility of service for everyone involved in the movement of goods by water, to the total benefit of the shippers and ultimately the consumer.

One other feature of S. 1314 that modernizes the 1940 Act is the parenthetical clause dealing with commodities transported in bulk prior to June 1, 1939.

Many new bulk commodities have been introduced to inland barge transportation since that date. Many other commodities, such as flour, sugar, etc., have switched to movement from bags or containers to bulk form for efficiency and economy of loading and unloading. The striking of this clause will update the law and be consistent with sound progress and development.

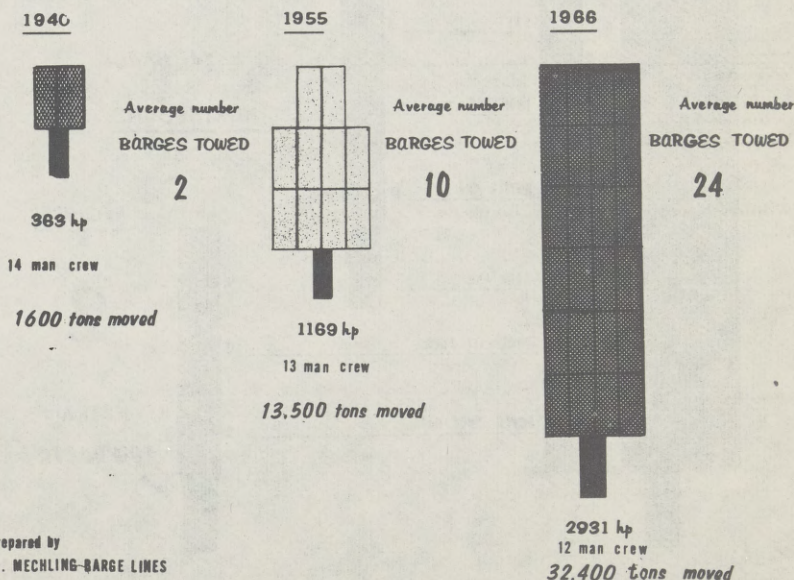
With the tremendous increase in transportation services which is going to be required, we must have as one of our national goals to make the best possible use of our transportation resources. This is the objective sought in S. 1314 with respect to the services of the towboat, tugboat, bargeline industry—the best possible utilization of vessel equipment, manpower and our network of navigation channels.

We are certain that the members of this committee agree with the objective which we are seeking. We hope you agree with the method and that we may have your favorable consideration of S. 1314.

On behalf of AWO, may I express our members' appreciation for the interest this committee has taken in this matter. I appreciate also the consideration you have given to my testimony. We are hopeful that Congress will approve S. 1314 in the interest of improving the efficiency of towboat, tugboat, bargeline operations in the United States, an industry which has pioneered in the innovation of technology in the construction and operation of vessels and in the use of our improved network of inland channels, as well as in providing operations along the three coasts—all, we believe, to the benefit of the overall economy of the country.

TECHNOLOGICAL ADVANCEMENT . . . A Comparison of Barge Tows — 1940 - 1966
Causing Changes in Operational Strategy

1



A COMPARISON OF TON MILE PRODUCTION

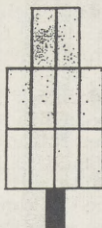
1940



TON MILES per day

145,600

1955



TON MILES per day

2,038,500

1966

TON MILES per day
4,892,400

A.I. MECHLING BARGE LINES

18' 6"
REGULATED BULK EXEMPT



SALT

IRON ORE

RUTILE ORE

SODA ASH

PHOSPHATE ROCK

SUPER PHOSPHATE

NO
Under the "Mixing Rule"....

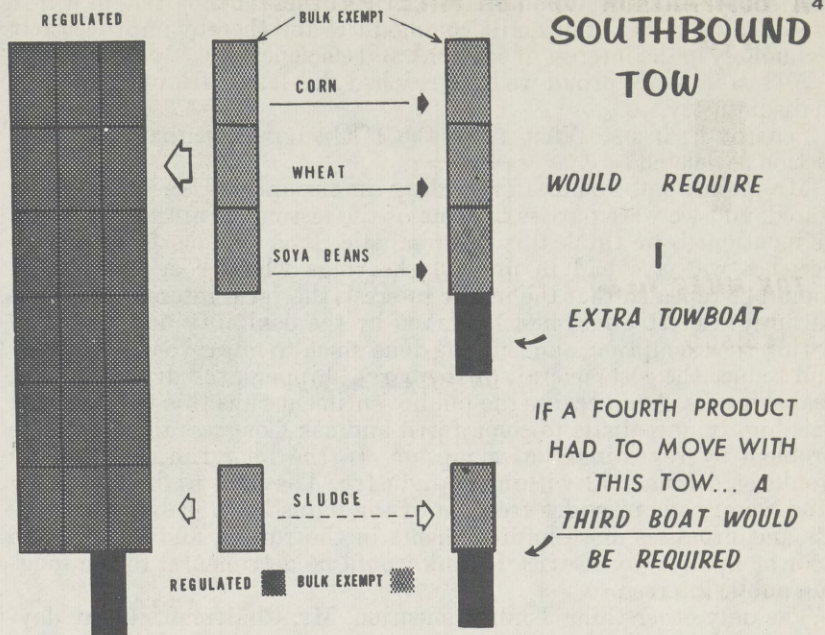
A typical MECHLING

24 BARGE

NORTHBOUND TOWREQUIRES

2

EXTRA
TOWBOATS



Mr. MECHLING. The substance of my statement has been covered by previous witnesses and very clearly stated by Senator Magnuson and by Mr. Hershey and Mr. Struble. I do want to add supplementally that as a representative of the American Waterways Operators, representing 206 members in the inland water carrier industry, in the tugboat and barge-towing industry, in performing and towing throughout the inland waterways system, that the members of this association after lengthy debate are proud to state that as a unit and as a part of the transportation industry, we are proud that we can come before Congress united with the whole water carriers industry in support of this legislation.

The waterways operators had an important part in developing the unanimity that has been presented to you here this morning.

Senator PEARSON. I understand the last time you were here there was some division and some litigation pending at that time.

Mr. MECHLING. There was. There was a split within the industry, and the progress of time and the realization of the soundness of this type of legislation has dictated that this position be altered, and we now come before this committee in Congress in full support.

Senator PEARSON. Is there any litigation pending now?

Mr. MECHLING. Not to my knowledge. It has all been dismissed and dispensed with by a final decree by the Supreme Court. Improving not only the common carrier traffic which we are a member of and which our company in particular is engaged in broad participation with common carrier transportation within our company transporting about 51 percent of our traffic that we move under regulation, but this also adds additional technologies and improvements to the bulk exempt

carriers as stated by Commission Tierney wherein they put in a mix tow a multinumber of dry milk commodities and thereby improve their technology in the interest of economy and efficiency.

As I say, we are proud we have reached this landmark of unanimity in the industry.

Senator PEARSON. What about the ICC suggestion that the whole section be deleted?

Mr. MECHLING. You mean repealing the exemption? As Mr. Hershey stated, and we were parties to some of the testimony in the years that he mentioned, we think this is unrealistic. It is obvious from the experience we have had in previous hearings whether or not 303(b) should be repealed that the public interest, the farm interest, the agricultural interest would best be served by the flexibility now provided within the exemption, and this has done much to improve the efficiency and reduce the costs overall of the barge shippers, the dry chemicals, coal shippers. And because the public sentiment runs this way, I think it is highly unrealistic to come forth and ask Congress to correct the problem by repealing the exemption. In the long run, it probably would be detrimental within the industry. The long highways of inland waterways provides freedom of the industry to utilize the benefits and promises more improvements in the future, and to close the door or in any way restrict I think would be detrimental to the long-run public interest.

The only other thing I might mention, Mr. Chairman, in our day-to-day activities that we run in soliciting traffic and providing service, not only for the regulated shippers—iron and steel shippers, paper and lumber, cargoes of that nature, but also the grain and agricultural interests—that we are constantly running into the problem of competition with foreign commodities moving into our domestic markets. And this mixing rule correction permits increased efficiency in order for us to move on the same tow iron and steel with agricultural commodities going to export helps us to lower our transportation costs and permits those producers to supply products and compete in the lower Mississippi River and gulf coast markets their products in competition with foreign products of the same nature moving in the gulf coast area. We also balance the trade impact.

We would like to bring before the committee that we think it important to keep in mind the one of real need and desire for this change.

I believe that briefly covers all we would like to say except to echo support and endorsement of the statements that have previously been made, and I know Mr. Carr would like to make a supporting statement also. Thank you for hearing us on the subject, and we hope this committee will act favorably.

Senator PEARSON. Would you like to make some comments?

Mr. CARR. I would only like to add my endorsement to the support of the legislation that has been evidenced by the witnesses here this morning and emphasize the urgency of the problem that is before us, and express our appreciation for your courtesy.

Senator PEARSON. Thank you very much.

Senator Scott, do you have any questions?

Senator SCOTT. I take it in view of the deadline, the hope of the entire industry is that action of this bill can be expedited and that is why this meeting has been called on rather short notice.

Mr. MECHLING. Yes, sir; that is correct, Senator. Otherwise we run into a reversal of all we have gained and cancellation of all of the advancement we have made over a period of over 20 years of progress. So if we fail to do this, it will adversely affect us and primarily the small shippers who have the occasional barge load or two barge loads a month. They find themselves in a deteriorated service which will ultimately occur if it is not permitted to open up this freedom of manner.

Senator PEARSON. I want to ask counsel if he has any questions.

Mr. SENDER. Your support goes to both of the proposed amendments, am I correct?

Mr. MECHLING. Yes, it does.

Mr. SENDER. Thank you.

Mr. MECHLING. Thank you.

Senator PEARSON. Thank you very much, gentlemen. It has been very helpful for us, as Senator Scott observed on such short notice.

Before I continue these hearings, I will ask Senator Scott if he has any comments to make concerning this bill.

Senator SCOTT. I would like to point out, if it has not already been made that barge tonnage through the Pittsburgh area exceeds the annual cargo tonnage handled through the Panama Canal. Therefore, this industry is now of great importance to Pennsylvania.

I think the witnesses have taken note of the fact that the chairman of the committee, Mr. Magnuson, has been very accommodating not only in introducing the bill and entertaining his favorable attitude toward it but in calling hearings very promptly against the legislative situation which is extremely difficult for all of us.

I would like the witnesses to know something of the problems we have in getting legislation out. It is necessary to ask the committee to meet in executive session. We are up against the end of the fiscal year at this time, and the Senate is, therefore, in session now and went into session at 10 o'clock this morning. We are meeting only because of the courtesy of the leadership of the Senate, and unfortunately any Senator could object to our being in session while the Senate is in session. The Senate has to give us permission to meet which enables us to get this done.

All of us have been extremely busy. For example, I have this morning been to four subcommittee meetings, and at each of them the witnesses and the constituents in my district feel I should stay. The drug hearings are going on, and the entire trade associations, the witnesses pro and con are of the firm opinion that I should be there at all times to hear the drug witnesses. The same is true of the lawyers and judges in hearing on the improvement of judicial machinery, the Federal jury selection. And I testified this morning on campaign legislation before the Senate Rules Committee. I also attended Judiciary Committee meetings.

It therefore becomes very difficult for any one of us to be able to devote our entire time to a subcommittee, not because we don't want to, not because we are not aware of the needs. It needs to be said because I gather there has been some pressure in each of these committees that I should be at all four places.

There are only two Senators from Pennsylvania. The other one is in all probability as busy as I am.

I can assure the witnesses that their concern is understood, that the Senators are fully aware of the problems of western Pennsylvania, that I have a favorable reaction to this matter, and I will help them in every way possible. I would solicit an equal understanding of the nature of our problems.

Mr. MECHLING. Senator Scott and Mr. Chairman, on behalf of the industry we do sincerely express our thanks to you under these emergency circumstances to hear us and put these matters forward. We were reluctant to do it but realized the longrun urgency and the impact on the inland waterways ship operators, not only the carriers themselves, and we humbly appreciate your willingness to hear us and get this matter in motion. Thank you very much for doing so.

Senator PEARSON. Thank you very much to all those testifying today. We are going to continue these hearings at 9 o'clock in the morning, and we are going to meet at that time in room 457 in the Old Senate Office Building. Does anybody else have anything else?

(No response.)

Senator PEARSON. We will stand adjourned.

(Whereupon, at 12:17 p.m., the subcommittee recessed, to reconvene at 9 a.m., Thursday, June 29, 1967, in room 457, Old Senate Office Building.)

WATER CARRIER MIXING RULE EXEMPTION

THURSDAY, JUNE 29, 1967

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

The subcommittee met at 9 a.m., in room 457, Old Senate Office Building, Hon. Frank J. Lausche presiding.

Senator LAUSCHE. The meeting will come to order.

The hearings this morning will deal with S. 1314, the bill proposing to amend section 303(b) of the Interstate Commerce Act. The bill's purpose is to modernize certain restrictions upon the application and scope of the exemption providing for the mixing of cargoes.

The first witness today will be John E. Gross, chairman of the Inland Waterways Committee of the National Industrial Traffic League.

STATEMENT OF JOHN E. GROSS, CHAIRMAN, INLAND WATERWAYS COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE, ALSO GENERAL TRAFFIC MANAGER, INLAND STEEL, CHICAGO, ILL.

Mr. Gross. Senator, I appear in behalf of the National Industrial Traffic League in my capacity as you mentioned, as chairman of its Inland Waterways Committee.

I am also a member of the executive committee of the league and I am general traffic manager of Inland Steel Co., of Chicago.

By way of introduction of the league, it 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.

For over more than 60 years of its existence, the National Industrial Traffic League has been dedicated to the development and maintenance of sound conditions in transportation, having in mind the needs of the Nation, the carriers, and shippers. To that end the members, committees, and officers of the league are constantly studying and acting upon policies with respect to transportation. Among other things the league has frequently presented its views to the Congress on proposed transportation legislation. We appreciate very much the opportunity afforded us to do so today.

Legislative proposal here under discussion:

The subcommittee is here considering amendments to section 303 (b) of the Interstate Commerce Act, which presently provides as follows:

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

S. 1314 contains two amendments to section 303 (b). The first would delete from the above language the phrase: "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)."

The second amendment would strike the following sentence in its entirety:

... For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel ...

The league has for many years had a very clearcut policy on both amendments here involved. I would like to quote from that policy:

The League approves retention of the bulk commodity exemptions appearing in Sections 303 (b) and (c) of the Interstate Commerce Act, modified or amended by elimination, first of the present "three commodity" restrictions, and second, of the present "as of June 1, 1939" restriction.

It can be noted that S. 1314 is perfectly compatible with the above long-established policy of the league. Consequently, the league here appears in support of the enactment of S. 1314. I shall discuss the two amendments in the consecutive order in which they appear in the bill.

First is the deletion of the benchmark in time of the definition of "commodities in bulk." At present this is determined "in accordance with the existing custom of the trade in the handling and transportation of such commodities" and is being governed by practices in vogue and products produced almost 30 years ago. Such a provision, to us, seems to imply the assumption or the conclusion that no further progress will be made subsequent to that date. Events have proved this to be wrong, as we may well have expected.

Therefore, the league strongly endorses the deletion of the quoted phraseology, and our reason is in two parts: First, there are many new commodities which have been developed since June 1, 1939, and many more will be developed in the future, which are truly commodities in bulk and which can be conveniently, efficiently, and safely transported in bulk. The chemical industry, and the petroleum industry are notable for having developed such new commodities.

Second, many commodities which existed prior to June 1, 1939, but which, for some reason, had not been transported in bulk may now be so transported, because of technological improvements in handling methods or improvements in transport equipment and accessorial facilities. Illustrative of these changes are the advances in the technology of transportation whereby bags, barrels, or packages have been eliminated in order to utilize the vehicle itself as the container in

achieving the benefits of maximum quantity and economy in the transport of commodities in bulk.

I do not have to tell the members of this subcommittee that transportation is one of the most dynamic segments of our economy. The shipping public has every right to expect such a dynamic transportation industry and the laws that govern it should keep pace with technological change and new developments, and should in every way be able to adapt to the developments with respect to old commodities. The league is strongly opposed to any such magic date as June 1, 1939. We consider it obstructive of the kind of progress both the Congress and the shipping public expect and desire. In our judgment there is no justification or need in section 303(b) for the date June 1, 1939, or any other date, for that matter.

Elimination of the so-called "mixing" rule:

This brings me to the second amendment contained in S. 1314, which calls for the deletion in section 303(b) of the following sentence:

... For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel ...

The league is strongly in favor of this amendment, because it will enable the barge lines to assemble tows of optimum size within a minimum time span. This benefit is achieved, because the amendment would permit carriers to assemble tows without regard to how many individual commodities are contained in the various barges, and without regard to whether any of the barges contain nonbulk commodities. I have, of course, in mind that in any single barge there could not be more than three commodities in bulk at one time.

If this amendment is not passed, it is our firm conviction that the shipping public will be deprived of important economies and efficiencies in barge transportation. Put another way, the shipping public will ultimately be compelled to bear the burden of inefficient, more costly, barge transportation.

To explain this further, we know that barge transportation is conducted most efficiently when the maximum number of barges can be assigned to individual tows. Over the years the maximum quantity of barges per tow has increased dramatically, and we understand that this has been particularly true within the last 10 years.

Unless the law is changed in accordance with this amendment, logic tells us that the water carriers have only two courses of action: they may either (1) delay the accumulation of tows in order to achieve optimum size while still avoiding the inclusion of more than three separate bulk commodities within a single tow; or (2) release tows with less than the optimum number of barges. Should the first alternate be selected, lengthy delays in the transportation service would result, to the detriment of the shipping public. Such delays would cause a longer and possibly more importantly, more erratic time in transit between given ports. It would be only realistic to state that such unpredictable and slower service could very well cause barge service to be useless in those trades where transit time is important.

The other alternate would be to operate with smaller and, therefore, less efficient tows. This would minimize transit time but would drive the carriers' costs up. This cost increase would inevitably be reflected in the rate structures, to the detriment of the shipping public.

Obviously, neither alternate would be satisfactory, and a combination of the alternates would only compound the disadvantages of each.

CONCLUSION

Consequently, the National Industrial Traffic League strongly supports S. 1314 as a major advance in the field of interstate transportation. As indicated, failure to enact this legislation will not serve the public interest; in fact, failure to pass this legislation will operate most adversely to the interests of the shipping public. We strongly endorse passage of this bill.

Senator LAUSCHE. Mr. Gross, it is my understanding that the National Industrial Traffic League accepts as members industries and individuals who are in need of public transportation service, except carriers who are interested in that industry?

Mr. GROSS. That is correct.

Senator LAUSCHE. How many members do you have?

Mr. DORE. I am executive secretary of the league.

Slightly over 1,600.

Senator LAUSCHE. They are not limited to shippers alone, are they?

Mr. DORE. You could have boards of trade, chambers of commerce, and associations such as that. But no regulated carriers.

Senator LAUSCHE. It is your view that the language contained in the existing bill, which among other things states: "in accordance with existing custom of the trade in handling and transportation of such commodities as of June 1, 1939," that language was intended to place an outside limit on what the definition of bulk commodities is?

Mr. GROSS. Yes.

Senator LAUSCHE. And your association takes the position that that definition, while it might have been sound in 1939, is no longer sound in 1967 because of technological changes in packaging and the development of commodities?

Mr. GROSS. That is right, sir.

Senator LAUSCHE. You therefore support the elimination of that language?

Mr. GROSS. We support the elimination of the language.

Senator LAUSCHE. The second part is the bill contemplates eliminating the following words:

For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.

It is your view that this circumscription placed upon the definition of a single vessel is not sound?

Mr. GROSS. That is our position. We believe that that language should be stricken also.

Senator LAUSCHE. In other words, you support the bill as it is written?

Mr. GROSS. Precisely as it is written.

Senator LAUSCHE. Thank you for your testimony.

Mr. GROSS. Thank you for hearing us.

Senator LAUSCHE. Mr. Clinton H. Vescelius, member of Transportation and Distribution Committee of Manufacturing Chemists Association, Inc.

You may proceed.

STATEMENT OF CLINTON H. VESCELIUS, MEMBER OF TRANSPORTATION AND DISTRIBUTION COMMITTEE OF MANUFACTURING CHEMISTS' ASSOCIATION, INC., WASHINGTON, D.C.

Mr. VESCELIUS. Mr. Chairman and members of the subcommittee, my name is Clinton H. Vescelius. I am appearing in behalf of the Manufacturing Chemists' Association, nonprofit trade association of 186 U.S. corporations, both large and small, that collectively represent more than 90 percent of the productive capacity of the basic chemical manufacturing industry in this country. I am professionally employed by a major chemical company as its director of transportation and am currently serving as a member of the Manufacturing Chemists' Association's Transportation and Distribution Committee.

The association's members have nearly 2,000 plants in the United States with a representation in almost every State. Many of these plants are located on navigable waterways and make use of the inland waterway system 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 from their plants and warehouses.

The purpose of S. 1314, reduced to a single statement, is to make lawful the practice of mixing unregulated bulk and regulated non-bulk commodities in a single tow on the inland waterways, a practice which has been followed for 27 years, but which is now unlawful as a result of a recent U.S. Supreme Court decision.

The bill will benefit water carriers. It will benefit shippers. Also, it is in the public interest in that it will continue the policy and practices that have brought prosperity to localities and regions, to other industries, and to competing modes of transportation.

First, the benefits to the water carriers are produced from the efficiency and profitability of the mixed tow, which utilizes high-powered boats to push large tows and consequently reduces unit cost. The alternatives, which include private carriage, are more costly.

Secondly, shippers, including chemical shippers, benefit from the effect on transportation charges of the reduced unit costs. A historical comparison will show the need that the chemical industry has for the waterways and also will measure the tremendous increase in their use by the chemical industry.

Domestic barge transportation of chemicals and related products increased by 120 percent between 1957 and 1964, the last year for which statistics are available.

DOMESTIC BARGE TRAFFIC

[Tons of 2,000 pounds]

Chemical and related products	1957	1964	Increase
Coal tar products.....	1,844,050	3,584,448	1,740,398
Medicinal and pharmaceutical preparations.....	150	242	92
Sulphuric acid.....	1,669,720	3,111,403	1,441,683
Industrial chemicals (except sulphuric acid).....	3,436,705	8,286,276	4,849,571
Pigments, paints, and varnishes.....	16,354	60,469	44,115
Nitrogenous fertilizers and fertilizer materials.....	174,328	698,931	524,603
Phosphate fertilizer materials.....	1,234,461	2,983,346	1,748,885
Potash fertilizer materials.....	36,641	83,719	48,078
Fertilizer and fertilizer materials, not elsewhere classified.....	242,058	337,483	95,425
Miscellaneous chemical products.....	18,404	9,892	(8,511)
Total.....	8,672,871	19,157,210	10,484,339

Source: Waterborne Commerce of the United States. Department of the Army, Corps of Engineers. Pt. 5, National Summaries. Calendar years 1957 and 1964.

This dynamic growth in water transportation of chemical products has not been at the expense of other modes of transportation. Quite to the contrary, railroad shipments of chemical products from the Baton Rouge-New Orleans area, for example, have grown in the past 10 years from almost nothing to daily trainloads.

Shippers of chemical products have chosen to locate many of their plants along the rivers because of the low cost and the efficiency of water transportation. Along the Mississippi River between Baton Rouge and New Orleans, 44 such plants, representing a \$2 billion investment in facilities and land, have been established in a little more than 10 years. The presence of the river which provides access to domestic and world markets and raw materials was an indispensable factor in the choice of those plant locations. Elsewhere in the Nation, wherever rail and river meet, industrial wealth is produced. The chemical companies of this association, to maintain the healthy growth which has occurred during the life of the mixed-towing practice, urge its continuance. To end it now would, in the view of the chemical industry, serve no constructive purpose; rather, it would place an impediment on the ability of water carriers to provide efficient transportation. Approval of this bill will insure the continuation of efficient practices that benefit the economy and the consumer.

Sound economic conditions have been fostered by the mixed towing practice and this is in the public interest. The water carriers have demonstrated, by the adoption of the practice, the sound economy of it. Shippers would suffer higher costs and transportation delays if it were to continue to be unlawful. Chemical products which did not exist 10 years ago are today produced at riverside plants and move in trainload volume, and the railroads have benefited. These are precisely the sound economic conditions which are sought in the national transportation policy of the Congress.

A second portion of the bill would repeal the June 1, 1939, grandfather date. This provision has been difficult to interpret, appears to serve no useful purpose, and chemical shippers strongly recommend its removal.

In closing, S. 1314 appears to be that happy rarity which will benefit all and injure none. We strongly endorse its adoption.

Mr. Chairman, we thank you very much for giving the Manufacturing Chemists Association this opportunity to appear before you. We appreciate it.

Senator LAUSCHE. While you are speaking primarily for the Manufacturing Chemists Association, do you take the position with respect to this bill that we are considering, that if adopted it will benefit the shipper, the consumer, the carrier, and the general economy?

Mr. VESCELIUS. Yes, sir; that is our position. And also competing forms of transportation, for that matter.

Senator LAUSCHE. And for the advantageous use of technological improvement, it is necessary to eliminate from this law the antiquated provisions which it now contains?

Mr. VESCELIUS. Yes, sir; that is our position.

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

The next witness will be Charles H. Wulff, traffic manager, the Farmers Union Grain Terminal Association, St. Paul, Minn. He is accompanied by Bruce J. Hendrickson, assistant executive secretary, National Federation of Grain Co-Operatives.

You may proceed.

STATEMENT OF CHARLES H. WULFF, TRAFFIC MANAGER, THE FARMERS UNION GRAIN TERMINAL ASSOCIATION, ST. PAUL, MINN.; ACCOMPANIED BY BRUCE J. HENDRICKSON, ASSISTANT EXECUTIVE SECRETARY, NATIONAL FEDERATION OF GRAIN CO-OPERATIVES, WASHINGTON, D.C.

Mr. WULFF. My name is Charles H. Wulff. I am general traffic manager of Farmers Union Grain Terminal Association, a regional grain marketing cooperative with home offices located in St. Paul, Minn.

My purpose in appearing before this committee is to express Farmers Union Grain Terminal support of S. 1314.

GTA owns and operates a terminal elevator located on the banks of the Mississippi River at St. Paul, Minn., from which we ship grain by barge to many points located on our inland waterways. The grain we ship is that produced by our patron members located in the States of Minnesota, North Dakota, South Dakota, and Montana. We have found that our origin territory, because of its geographic location, has become one of if not the most expensive origin territories in the country so far as transportation is concerned.

GTA also has part in a river elevator located at St. Louis, Mo. It is for this reason that we are vitally interested in good, dependable, low-cost transportation.

Barge transportation is as yet the lowest cost transportation available at St. Paul today. We ship an ever-increasing amount of our grain by barge even though they are only available to us during the summer months.

Our increased use of barge transportation follows very closely the reduction in barge rates, and we feel that we are able to sell into export channels, for instance, more grain because reduced barge rates made our grain more competitive.

GTA has watched the transition of the barge lines with great interest. They have increased the size of everything on the river except the rate per ton. The individual barges are larger, they are being put together in greater numbers to make larger tows, and the barge lines

are building tow boats to match. In this respect they are not unlikely any other mode of transportation in the trend to ever-larger equipment. Like other modes of transportation, the economics of this trend dictates that maximum utilization of this equipment must be made or else the economics and efficiencies begin to break down.

The story is the same with railroads and trucks. I am sure the committee is aware of what has happened to rail rates in some areas of the country when railroads have used large equipment and were able to improve the utilization of this equipment. Rates have been reduced and as a result both the shipping public and the carriers are better off.

This has been possible because the railroads have been free to take advantage of technological advances in their industry. Similar cases are obvious in the trucking and airline industries.

The problem in the barge industry is that in section 303(b) of the Interstate Commerce Act there is a parenthetical expression that defines or actually limits exempt bulk commodities to those being moved as of June 1, 1939. This is further restricted by another definition of the same vintage that makes two or more vessels, barges, being navigated as a unit, a single vessel. These two definitions made in 1939 based on 1939 experience and situations, may have been adequate for a time, but with the changes that have and are taking place, such definitions are now unreasonable and restrictive.

The problems presented by the present wording of section 303(b) on the commodity list is that full utilization is difficult to accomplish under the resulting mixing rules. For instance, each grain is now considered a separate commodity. GTA ships by barge corn, wheat, soybeans, rye, and oats, and could very easily load them in such a manner that all of them could be contained in a single tow. The present rule prohibits this and requires that at least two of these grains be held for another tow. Nothing is really accomplished except a costly delay for GTA and the bargeline.

The single vessel concept injures its delays in the same manner. Barges are often held for as long as a week or more until the owning bargeline has another boat available, whereas the barge could have been moved by another bargeline under some exchange basis except for the present wording of the act.

These examples are not meant to be all-inclusive, but merely indicative of the expensive operating conditions created by definitions made in 1939.

GTA needs barge service that is low cost and efficient. It is our opinion that S. 1314, which proposes to eliminate the two rather unique restrictions from section 303(b) of the act, will do much to permit barge lines to make use of technological advances that will permit them to continue and even improve their service at a low cost with no unreasonable adverse effect on any segment of our economy.

Thank you very much.

Senator LAUSCHE. What is the composition of your membership?

Mr. WULFF. The composition of our membership consists of member elevators who are local cooperative elevators located in States I described, and who are owned by producing members located in the regions in which they are located.

Senator LAUSCHE. It has for members many cooperatives?

Mr. WULFF. It has as members local cooperatives and, to go back one step, the producer members of the local cooperatives. There are roughly 450 local elevators and 150,000 local producers.

Senator LAUSCHE. Producers, and by producers you mean the man that produces the grain.

Mr. WULFF. The farmer himself, yes.

Senator LAUSCHE. In view of the technological developments that have been achieved in transporting cargoes on the inland waters, it is the view of your association, and incidentally of your membership, that the 1939 prohibition that not more than three commodities may be included in one vessel, and that vessel by definition in law means that if there is more than one barge, that whole thing must be considered as one. You believe that that is unsound at this time?

Mr. WULFF. Yes, sir.

Senator LAUSCHE. And therefore you support the amendments which are contained in this bill?

Mr. WULFF. We do.

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

Mr. WULFF. Thank you.

Senator LAUSCHE. The next witness is Matt Triggs, assistant legislative director, American Farm Bureau Federation.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.

Mr. TRIGGS. Thank you, Mr. Chairman.

We appreciate the opportunity of presenting the views of the American Farm Bureau Federation with respect to the proposed modernization of the exemption from regulation of inland water carriers transporting dry bulk commodities.

At the last annual meeting of the American Farm Bureau Federation the official voting delegates of the member State farm bureaus approved the following policy:

We support the present exemption from economic regulation of inland water carriage of bulk commodities and recommend that the dry bulk exemption be applicable to all dry bulk cargo irrespective of other cargo in the same vessel or tow.

We therefore support the enactment of S. 1314.

We believe that regulation of transportation should be limited to that which is clearly in the public interest. In the case of inland water transportation of bulk commodities regulation is unnecessary in the public interest because competition among carriers is an adequate protection of the public interest.

The enactment of S. 1314 would eliminate limitations on the exemption which, in our opinion, serve no adequate public purpose and, in fact, limit the ability of water carriers to provide the most efficient service.

Such enactment would implement the national transportation policy of the Interstate Commerce Act in that it would "recognize and preserve the inherent advantage" of water carriers in the shipment of bulk commodities and would "promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation."

We appreciate the opportunity to state our support for the enactment of S. 1314.

Thank you, Mr. Chairman.

Senator LAUSCHE. You join in the expression of the other witnesses that the present law operates as a hindrance to the fullest enjoyment of the technological advancements that we have made in shipping?

Mr. TRIGGS. Yes, we do.

Senator LAUSCHE. And that that is economically unsound?

Mr. TRIGGS. That is correct.

Senator LAUSCHE. The law that was probably sound in 1939 is no longer contributing to the development of the economy and helping the shipper, the carrier, the consumer, and the general economy.

Mr. TRIGGS. Yes, sir. We believe it is certainly in the public interest.

Senator LAUSCHE. Thank you very much, Mr. Triggs. You are always welcome.

Mr. TRIGGS. Thank you, Mr. Chairman.

Senator LAUSCHE. C. J. Harriss, vice president, transportation, Continental Grain Co.

STATEMENT OF C. J. HARRISS, VICE PRESIDENT, TRANSPORTATION, CONTINENTAL GRAIN CO., NEW YORK, N.Y.

Mr. HARRISS. Continental Grain Co. wishes to go on record in support of this legislation. Continental operates inland grain elevators and export grain elevators throughout the United States, and is engaged, among other things, in the buying, selling, storing, merchandising, and exporting of all of the principal whole grains produced in the United States. We are comparatively heavy shippers of grains, utilizing all modes of transportation.

The importance of efficient transportation to Continental Grain Co. could be exemplified by the fact that, during our latest fiscal year, we caused to be physically unloaded, at our company operated elevators in the United States, well in excess of 600 millions of bushels of grain.

We hold no favoritism for any mode of transportation of grain. Each mode; namely, barge, truck, and rail has a valid place in the grain transportation picture, and we favor the maximization of the inherent advantages of each of these modes.

The bill, here considered, most properly seeks to continue to allow the inland barge systems to maximize inherent advantages. You have before you at this hearing, or will have shortly, description of the amazing technological progress and growth of transportation via inland water. The exemption from regulation, could properly be said to be the very reason for the amazing progress of the industry. Competitive necessity to improve, innovate, and invest, engendered by the free enterprise system of freight pricing allowed by the exemptions, appears to us to be an important reason for the amazing progress of the industry. The industry must be allowed the latitude necessary to continue, as example, to be able to accumulate 40 barges in a single tow. We therefore here support S. 1314 because it will make possible the continued accumulation of the economical, large volume tows, prevent the frustration of modern technology, and insure the lowest rates of freight consistent with profit.

S. 1314 is definitely in the public interest.

As Continental Grain Co. we fully support the lowest transportation costs consistent with efficiency under private management, in order to help increase prices to the farmer and reduce them to the consumer. This bill will allow such, through insuring that the waterways operators will continue to be allowed to maximize their efficiency.

Thank you very much.

Senator LAUSCHE. Mr. Harriss, the Continental Grain Co. is engaged in the grain business, is that correct?

Mr. HARRISS. That is correct; yes, sir.

Senator LAUSCHE. It is not an association?

Mr. HARRISS. No, it is not. We are an industry, you might say, an agricultural industry.

Senator LAUSCHE. Do you export to foreign countries?

Mr. HARRISS. Yes, sir; we are primarily exporters.

Senator LAUSCHE. Can you tell me, and this is not immediately pertinent to the issue before us, by how much the selling price of grain to foreign consumers is increased because of the present law requiring that, I think 55 percent of it be shipped in American bottoms?

Mr. HARRISS. No, I can't answer that. I can say it would be significant.

Senator LAUSCHE. You don't have the actual figures?

Mr. HARRISS. I do not.

Senator LAUSCHE. But it is significant as far as selling in the world market?

Mr. HARRISS. That would be my opinion, yes, sir. Very definitely.

Senator LAUSCHE. I mention that because that points up the existence of a law that is a hindrance to the economy, a hindrance to the farmer, and a disservice generally to the public.

Mr. HARRISS. I certainly agree with you, but I was not prepared to talk about that.

Senator LAUSCHE. I probably shouldn't have asked the question.

Thank you.

The next witness is J. A. Griffin, of Swift & Co., on behalf of National Plant Food Institute.

Mr. Griffin, you may proceed.

STATEMENT OF J. A. GRIFFIN, OF SWIFT & CO., ON BEHALF OF NATIONAL PLANT FOOD INSTITUTE, WASHINGTON, D.C.

Mr. GRIFFIN. Mr. Chairman, my name is J. A. Griffin. I am assistant general traffic manager, Swift & Co., with principal offices in Chicago. I have been authorized by Paul T. Truitt, president of the National Plant Food Institute, headquartered in Washington, D.C., to appear and present this statement on behalf of the institute.

I am vice chairman of the domestic water transportation subcommittee of the institute.

The National Plant Food Institute is a voluntary nonprofit trade association of the fertilizer industry. It has 125 members and 30 affiliated regional or State fertilizer associations.

Mr. Chairman, I have given your assistant 75 copies of the membership roster of the institute, and with your permission I think it would be of benefit to enter a copy into the record.

Senator LAUSCHE. It will be so printed.

(Membership roster follows:)

EXHIBIT 1

National Plant Food Institute membership list

[Names in parentheses are either parent companies or subsidiaries]

<i>Member</i>	<i>City and State</i>
Agrico Chemical Co., Division of Continental Oil Co.	
Agricultural & Industrial Corp.-----	Memphis, Tenn.
Agro-Vita, Inc.-----	New York, N.Y.
	Minneapolis, Minn.
	Syracuse, N.Y.
Agway, Inc.	
Long Island Produce Co.	
Fertilizer Manufacturing Cooperative, Inc.	
Alliance Fertilizer Corp.-----	Mechanicsville, Va.
American Cyanamid Co.-----	Wayne, N.J.
American Humates, Inc.-----	Dallas, Tex.
American Plant Food Corp.-----	Galena Park, Tex.
American Potash & Chemical Corp.-----	Los Angeles, Calif.
American Zinc Co. (American Zinc Sales Co.)--	St. Louis, Mo.
Arco Chemical Co. (Atlantic Richfield Co.)---	Philadelphia, Pa.
Armour Agricultural Chemical Co. (Armour & Co.)	Atlanta, Ga.
Atlantic Fertilizer Corp.-----	Riverhead, N.Y.
H. J. Baker & Bro., Inc.-----	New York, N.Y.
Blackshear Manufacturing Co., The (the Brantley Co.)	Blackshear, Ga.
Bluegrass Plant Foods, Inc.-----	Cynthiana, Ky.
F. W. Bolgiano & Co.-----	Washington, D.C.
W. C. Bradley Co.-----	Columbus, Ga.
H. N. Brocklesby & Associates-----	Long Beach, Calif.
Canada Packers Ltd. (Shur Gain, Inc.)-----	Toronto, Ontario, Canada.
Canadian Industries Ltd. (Chipman Chemicals, Ltd.)	Montreal, Quebec, Canada.
Central Farmers Fertilizer Co.-----	Chicago, Ill.
Central Resources Corp. (Pacific Coast Resources Corp.)	New York, N.Y.
C.F. & I. Steel Corp.-----	Denver, Colo.
Chilean Nitrate Sales Corp.-----	New York, N.Y.
Columbia Nitrogen Corp.-----	Augusta, Ga.
Cotton States Fertilizer Co.	
DSM Chemicals—Netherlands	
Etheredge Fertilizer Co.	
Pittsburgh Plate Glass Co.	
Planters Fertilizer Co.	
Smith Fertilizer & Chemical Co.	
Cominco American Inc.-----	Spokane, Wash.
Commercial Solvents Corp.-----	New York, N.Y.
Northwest Nitro-Chemicals	
United States Powder Co.	
Corenco Corp.-----	Tewksbury, Mass.
Burlington Rendering Co.	
Lowell Rendering Co.	
New Haven Rendering Co.	
Pawtucket Rendering Co.	
Portland Rendering Co.	
Springfield Rendering Co.	
Sagadahoc Fertilizer Co.	
Summers Division	
Syracuse Rendering Co.	
Upton Division, Syracuse Rendering Co.	
Worcester Rendering Co.	
Cotton Producers Association-----	Atlanta, Ga.
Diamond R Fertilizer Co., Inc.-----	Winter Garden, Fla.
Dixie Guano Co., Inc.-----	Laurinburg, N.C.

National Plant Food Institute membership list—Continued

<i>Member</i>	<i>City and State</i>
Dorchester Cotton Oil Co.-----	St. George, S.C.
Duval Corp.-----	Houston, Tex.
Ashcraft-Wilkinson Co.	
Flag Sulphur & Chemical Co.	
United Gas Corp.	
Electric Reduction Co. of Canada, Ltd.-----	Toronto, Ontario, Canada.
Albright & Wilson, Ltd.	
Gulf Design Corp.	
El Paso Products Co.-----	Odessa, Tex.
El Paso Natural Gas Co.	
Odessa Natural Gasoline Co.	
Emcee Industries, Inc.-----	Teaneck, N.J.
Empico Alunite Co.-----	Kirkwood, Mo.
Crest Chemical Co.	
Dawson & Co., Inc.	
G-W Chemco Inc.	
Escambia Chemical Corp. (Electric Bond & Share Co.)	New York, N.Y.
Esso Chemical Co., Inc.-----	New York, N.Y.
Enjay Chemical Co.	
Esso Chemical Inter-America, Inc.	
Humble Oil & Refining Co.	
San Miguel Fertilizer Corp.	
Standard Oil Co. (New Jersey)	
Faesy & Besthoff, Inc.-----	Edgewater, N.J.
Farmers Fertilizer Works-----	Elizabethtown, Pa.
Ferro Corp.-----	Cleveland, Ohio.
Freeport Sulphur Co.-----	New York, N.Y.
French Potash & Import Co., Inc.-----	New York, N.Y.
Geigy Agricultural Chemicals-----	Yonkers, N.Y.
Goodpasture, Inc.-----	Brownfield, Tex.
W. R. Grace & Co.-----	New York, N.Y.
Agricultural Products Division	
Carolina Nitrogen Corp.	
Nitrogen Products Division	
Rudy-Patrick Seed Division	
Sangamon Chemical Division	
Southwest Fertilizer & Chemical Division	
Walnut Grove Products Co.	
Greenlife Products Co., Inc. (Chesapeake Corp. of Virginia)	West Point, Va.
Gro-Green Chemical Co., Inc.-----	Shelbyville, Ky.
Gulf Oil Corp.-----	Kansas City, Mo.
Harrison & Crosfield (Pacific) Inc.-----	Seattle, Wash.
Heritage House Products (Diamond Alkalai Co.)	Cleveland, Ohio.
Howe Inc.-----	Minneapolis, Minn.
Hydrocarbon Products Co., Inc.-----	New York, N.Y.
I.C.I. (New York) Inc.-----	Do.
Indian Point Farm Supply, Inc.-----	Athens, Ill.
International Commodities Export Corp. (International Commodities Corp.)	New York, N.Y.
International Minerals & Chemical Corp.-----	Skokie, Ill.
The American Fertilizer Co.	
Peoples Fertilizer Co.	
Kalium Chemicals Ltd.-----	Atlanta, Ga.
Armour & Co	
Pittsburgh Plate Glass	
Kershaw Oil Mill.-----	Kershaw, S.C.
Ketona Chemical Corp.-----	Birmingham, Ala.
Lebanon Chemical Corp.-----	Lebanon, Pa.
Liberty Manufacturing Co.-----	Red Springs, N.C.

National Plant Food Institute membership list—Continued

<i>Member</i>	<i>City and State</i>
Man-An-So Corp., The.....	Nevada, Iowa
VSP Sales Co.	
Key Services Co.	
Mo-Ark Co., Inc.	
Marion Plant Life Fertilizer Co., Inc.....	Marion, Ohio
Alexander M. McIver & Son.....	Charleston, S.C.
Miller Chemical & Fertilizer Corp. (Alco Standard Corp.)	Baltimore, Md.
Mobil Chemical Co. (Socony Mobil Oil Co., Inc.)	Richmond, Va.
Monsanto Co. (Renville County Soil Service) ..	St. Louis, Mo.
R. S. Mueller Co.....	Baltimore, Md.
New Jersey Zinc Co., The (Gulf & Western Industries, Inc.)	New York, N.Y.
Nipak, Inc.....	Dallas, Tex.
Nitrogen Products, Inc.....	New Brunswick, N.J.
Noranda Sales Corp., Ltd. (Noranda Mines Ltd.)	Toronto, Ontario, Canada.
North American Fertilizer Co., Inc.....	Louisville, Ky.
Occidental Agricultural Chemicals Corp.....	New York, N.Y.
The Best Fertilizers Co.	
The Best Fertilizers Co. of Texas, Inc.	
Green Belt Division	
International Ore & Fertilizer Corp.	
Jefferson Lake Sulphur Co.	
Occidental Corp. of Florida	
Occidental Petroleum Corp.	
Olin Mathieson Chemical Corp.....	Little Rock, Ark.
Parker Fertilizer Co., Inc.....	Sylacauga, Ala.
Philipp Bros. Chemicals, Inc.....	New York, N.Y.
Philipp Bros., Division of Minerals & Chemi- cals Philipp Corp.	Do.
Phillips Petroleum Co.....	Bartlesville, Okla.
American Fertilizer & Chemical Co.	
Colorado Plant Food Co.	
Pine Level Oil Mill Co., The.....	Pine Level, N.C.
Plainsman Supply Co.....	Plainview, Tex.
Potash Co. of America.....	Denver, Colo.
Potash Import & Chemical Corp.....	New York, N.Y.
Warner W. Price Co., Inc.....	Smyrna, Del.
Reading Bone Fertilizer Co.....	Reading, Pa.
Richmond Guano Co.....	Richmond, Va.
Ridge Fertilizer Co.....	Lake Wales, Fla.
Service Gas, Inc. (Peacock Fertilizer Division) ..	Morris, Ill.
Shell Canada Ltd.....	Toronto, Ontario, Canada.
Sherwin-Williams Co., The.....	Cleveland, Ohio.
J. R. Simplot Co.....	Pocatello, Idaho
Sinclair Petrochemicals, Inc.....	New York, N.Y.
R. H. Slingluff Fertilizer Co.....	Mitchellville, Md.
Smith Chemical Co.....	Grand Junction, Colo.
Smith-Douglass, a Division of the Borden Chemical Co. (Commonwealth Fertilizer Co.)	Norfolk, Va.
Solar Nitrogen Chemicals, Inc.....	Lima, Ohio.
Atlas Chemical Industries, Inc.	
Standard of Ohio	
Vistron Corp.	
Southwest Potash Corp. (American Metal Climax, Inc.)	New York, N.Y.
Stauffer Chemical Co.....	San Francisco, Calif.
Consolidated Chemical Division	
Industrial Chemical Division	
Superior Fertilizer & Chemical Co.....	Tampa, Fla.
Swift & Co. (Victor Fertilizer Co.).....	Chicago, Ill.
Synthetic Fertilizers & Chemicals, Inc.....	New York, N.Y.

National Plant Food Institute membership list—Continued

<i>Member</i>	<i>City and State</i>
Tenneco, Inc.-----	Houston, Tex.
Tenneco Chemicals Co.	
Tenneco Oil Co.	
Tennessee Corp.-----	New York, N.Y.
Capital Fertilizer Co.	
Tennessee Copper Co.	
U. S. Phosphoric Products	
Texaco, Inc. (Federal Chemical Co.)-----	New York, N.Y.
Texas Farm Products Co. (Lone Star Phosphate Co.)-----	Nacogdoches, Tex.
Texas Gulf Sulphur Co.-----	New York, N.Y.
Transammonia, Inc.-----	New York, N.Y.
Tuloma Gas Products Co.-----	Tulsa, Okla.
Tyler Grain & Fertilizer Co.-----	Wooster, Ohio
United Co-operatives of Ontario-----	Weston, Ontario, Canada
United States Borax & Chemical Corp.-----	Los Angeles, Calif.
U.S. Industrial Chemicals Co., Division of National Distillers & Chemical Corp.	New York, N.Y.
USS Chemicals, Division of United States Steel Corp.	Pittsburgh, Pa.
Wedgworth's, Inc.-----	Belle Glade, Fla.
Wellman-Lord, Inc.-----	Lakeland, Fla.
Chemicals, Inc.	
Hydromines, Inc.	
Wilson & Toomer Fertilizer Co.-----	Jacksonville, Fla.
Cartledge Fertilizer Co.	
Emhart Corp.	
Florida Agricultural Supply Co.	
Peninsular Fertilizer Works	
Woodward & Dickerson, Inc.-----	Philadelphia, Pa.
Worcester Fertilizer Co., The-----	Snow Hill, Md.
Yakima Valley Spray Co.-----	Yakima, Wash.

Mr. GRIFFIN. Institute members and members of the affiliated associations produce and market approximately 75 percent of the fertilizer used on American farms.

The institute's members are major shippers by barge of fertilizer and fertilizer materials. Members of the National Plant Food Institute depend upon efficient, frequent low-cost water transportation to move the plant food which increases the food supply of the Nation.

Enactment of bill S. 1314 would permit the operation on the inland waterways of mixed tows of unregulated bulk commodities and regulated nonbulk commodities.

The importance of the inland waterways to the plant food industry can be surmised from the statistics of domestic barge traffic shown below.

DOMESTIC BARGE TRAFFIC, CALENDAR YEAR 1964

[In tons of 2,000 pounds]

Commodity No.	Commodity	Domestic internal (long haul)	Coastwise traffic	Intraport traffic (local)	Local traffic	Lake-wise	Intra-territory	Total
549	Sulfur, liquid-----	3,536,435	189,610	189,878	8,502			3,924,425
550	Sulfur, dry-----	120,743	67,084			6,720		194,547
849	Ammonia sulfate-----	43,098	16,761				58,807	118,666
851	Other nitrogen fertilizer-----	439,858	140,407					580,265
852	Phosphate rock-----	843,864	1,746,368					2,590,232
854	Superphosphate-----	250,037	143,077					393,114
855	Potash-----	2,483	82,236					84,719
859	Other fertilizer-----	308,520	27,563	360			1,040	337,483
	Total-----							8,223,451

Source: Table 10, "Domestic Barge Traffic, Commodities by Type of Traffic, Waterborne Commerce of the United States, Calendar Year 1964," pt. 5, Department of the Army, Corps of Engineers.

I would like to say that the commodities shown are all fertilizers or fertilizer materials.

These are the latest available statistics. The plant food industry has been growing steadily and later figures would be even higher than those of 1964.

The mixing of regulated and unregulated freight in a single tow on the inland waterways has been practiced since the passage of part III of the Interstate Commerce Act in 1940.

On March 20, 1967, the Supreme Court issued a per curiam order in No. 947 Gulf Canal Lines, Inc. et al. v. United States and Interstate Commerce Commission affirming a lower court's decision (258 F. Supp. 864 (1966)) that in order to retain its exemption from regulation under section 303(b) of the Interstate Commerce Act the water carrier must not only comply with the three bulk cargo restriction but must be certain that anyone it hires to do towing also complies with the restriction; that if an operator engaged by a bulk water carrier claiming exemption under section 303(b) transports more than three bulk commodities at once, or transports bulk and nonbulk commodities together, the carrier which hired it automatically loses its exemption and comes under I.C.C. economic regulations.

Thus Senate bill 1314, introduced on March 16, assumed even greater importance to the plant food industry.

The Interstate Commerce Commission, in response to a plea of the water carriers, and in view of the proposed legislation here being discussed, has postponed compliance until January 1, 1968.

Should bill S. 1314 fail to become law, water carriers will have to split large tows into smaller tows; powerful towboats will operate below their optimum efficiency, either as a result of pushing smaller tons or because of delays waiting for larger tows to be assembled; and the higher cost of the less efficient operations will affect the transportation charges to be paid by the plant food industry. These are the immediate results. The inevitable further consequence, however, is that the American consumer will pay more for food as higher transportation costs find their way into the cost and price structure of the food industry.

If these undesirable consequences were to be offset by other benefits, opposition to the bill might be justifiable. But no countervailing benefits are assured, or even likely. Failure to pass the bill would increase water costs without reducing rail costs. It would not cause the diversion of plant food shipments from barge to any other mode of transportation, but it would produce higher costs on the waterways. Certainly no countervailing benefit can be found for the farmer whose costs are made higher, and for the consumer whose prices are increased.

We also support that portion of bill S. 1314 which will remove the so-called grandfather date of June 1, 1939. This parenthetical clause is contrary to progress, precluding the advantages of lower costing transportation from newly developed bulk commodities or from commodities that advancements in methods of handling would now permit movement in bulk.

We respectfully request the committee to approve bill S. 1314.

Mr. Chairman, on behalf of the institute, I wish to thank you and the members of your committee for the opportunity to present our position.

Senator LAUSCHE. Senator Pearson?

Senator PEARSON. How do you ship fertilizer now? Is it in bulk commodity type shipment?

Mr. GRIFFIN. Yes, sir.

Senator PEARSON. Has that changed essentially since 1939?

Mr. GRIFFIN. There have been many changes in the—

Senator PEARSON. There have been many changes in fertilizer?

Mr. GRIFFIN. There have been many changes. We anticipate, through research, many changes not only in the fertilizer itself, in improvements in the fertilizer, but improvements in the method of distribution to the farmer.

Senator PEARSON. Is there a great percentage of fertilizer now shipped by bags, sacks, or cans, or is it just bulk commodity type shipment?

Mr. GRIFFIN. The trend is to the bulk commodity.

Senator PEARSON. Thank you.

Senator LAUSCHE. Mr. Griffin, do you ship by way of trucks and rail also?

Mr. GRIFFIN. Yes, sir.

Senator LAUSCHE. Is there an exemption granted to the railroads for regulation in the carriage of your fertilizer?

Mr. GRIFFIN. No, sir.

Senator LAUSCHE. Is it granted to trucks, do you know?

Mr. GRIFFIN. No, sir.

Senator LAUSCHE. Have you given a study to the subject adequate to express an opinion whether the same exemption ought to be granted to other carriers that is now granted to the inland water carriers?

Mr. GRIFFIN. Mr. Chairman, an opinion would dictate that in all fairness to all modes of transportation, exemption would be proper.

Senator LAUSCHE. That is, there ought to be equality of treatment by Government to all modes of transportation.

Mr. GRIFFIN. Yes, sir.

Senator LAUSCHE. Unless there are clear circumstances indicating there should be a different rule applicable.

That is all. Thank you very much.

Mr. GRIFFIN. Thank you.

Senator LAUSCHE. I will call Mr. Miller out of order: Dale Miller, executive vice president, Gulf Intracoastal Canal Association.

STATEMENT OF DALE MILLER, EXECUTIVE VICE PRESIDENT, GULF INTRACOASTAL CANAL ASSOCIATION

Mr. MILLER. Thank you, Mr. Chairman.

Gentlemen, my name is Dale Miller, and I am executive vice president of the Gulf Intracoastal Canal Association, with principal offices in Houston—a 62-year-old association of civic and business leaders concerned with the economic development of all States bordering on the Gulf of Mexico.

The development of the Gulf Intracoastal Waterway is one of the most remarkable success stories of all time. When it was first authorized, the official prediction was that it would ultimately develop about 5 million tons of commerce a year. Last year it transported more than 78 million tons, and the increase alone from the previous year of 6 million tons was more than had been predicted for an entire year.

Over a long period of years, the Gulf Intracoastal Waterway has been a major factor in the booming industrial development of the States along the gulf coast.

As the public demand has grown for more and more service, the barge lines serving the great gulf ports from Mexico to Florida have responded with improvement in technology. Despite increasing costs of labor and material, barge rates have remained at a level which has proved highly stimulating to industrial growth.

The Intracoastal Canal connects at four points with the Mississippi River, and the tributaries of this vast system stretch eastward to the Alleghenies, north to the Great Lakes and Canada, and west to the head of navigation on the Missouri up in the Dakotas.

Much of the traffic that develops on this extensive system is destined for cities on the gulf, and the raw materials and other products of the gulf find a ready market in this enormous 26-State region which encompasses more than half of the Nation.

Our concern with the obsolete wording of section 303(b) of the Interstate Commerce Act is that, if the technological advance of barge lines of the past 10 years is vitiated, the wholesome industrial development of the gulf area will be adversely affected. Industry is highly dependent on economical and efficient barge service for the delivery of cargoes from the main stem of the Mississippi to gulf ports, and for the delivery of gulf products to the main stem of the Mississippi.

We appreciate this opportunity to present these views on this important subject. Thank you.

Senator LAUSCHE. Senator Pearson?

Senator PEARSON. I have no questions.

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

Dean B. Lewis, general counsel and secretary, Island Creek Coal Co., Buckley Building, Cleveland, Ohio.

STATEMENT OF DEAN B. LEWIS, GENERAL COUNSEL AND SECRETARY, ISLAND CREEK COAL CO., BUCKLEY BUILDING, CLEVELAND, OHIO

Mr. LEWIS. Mr. Chairman, my name is Dean B. Lewis, general counsel and secretary of Island Creek Coal Co., which has its headquarters in Cleveland, Ohio.

I appear here in support of Senate bill 1314, which would amend section 303(b) of the Interstate Commerce Act in such a way as to enable barge carriers to make full use of the efficient techniques and equipment they have developed in recent years.

As the law stands today, barge lines are as a practical matter prohibited in most cases from combining in a single tow more than three different bulk commodities, and also from carrying both bulk and nonbulk commodities in the same tow. Yet they have, today, the capacity to move very large tows, of as many as 40 or more barges, and they frequently need to be able to combine in such tow both bulks and nonbulk commodities, or to carry more than three bulk commodities, if they are to take advantage of the efficiencies and economies which technological progress has made possible. It is only if the advantages of

such technological progress in moving materials—whether by train, plane, truck or barge—are allowed to be realized that shippers and consumers can hope to gain the benefits in efficiency and reduced transportation costs which such progress should bestow on them.

Our interest in this matter is as large volume shippers on the inland waterways of the United States. Nearly 2 million of the roughly 25 million tons of coal which we produced and sold last year moved by barge, part or all of the way to its destination. From mines in three States—Virginia, West Virginia, and Kentucky—we supplied several dozen customers in 12 different States by barge, using several different barge lines. We are currently developing five new mines which, in addition to increasing our annual production to some 40 million tons, will more than triple the amount of our coal that moves by barge. By 1971, approximately 20 percent of our production will move by barge. The Hamilton Mine alone, located on the Ohio River in Kentucky, will have an annual capacity of over 5 million tons of coal, all of which will move by barge.

The cost of transporting our coal to our customers, whether by barge or otherwise, is always a significant element of its total delivered cost—sometimes more than the cost of the coal itself. Nearly 40 percent of our coal is sold to electric utilities, where it is in tight competition with other fuels, and a fraction of a cent in delivered cost per million B.t.u.'s of heating value makes all the difference—to us, to the utilities, and to the public which consumes the electricity.

We are therefore vitally interested in the ability of the barge lines to realize cost savings in their operations which can be passed on to us and, through us, to the consuming public.

The barge lines have done a remarkable job in recent years—as have the railroads—in developing techniques and making use of equipment which have made possible reduced transportation costs. They should not be prevented by artificial statutory barriers—nor should their shippers and the consuming public—from realizing the benefits of these economies.

Therefore, Mr. Chairman, I come back to my starting point. As the law stands today, my understanding is that the barge lines typically cannot, for all practical purposes, combine in one tow more than three bulk commodities, or mix in any nonbulk commodities. They have the equipment, the techniques, the potential customers, to do so, at considerable savings all around, if the law would allow. We think that, in the public interest, the law should allow. Therefore, we support S. 1314, and urge the subcommittee to report it favorably.

Thank you.

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

Any questions?

Senator PEARSON. I have none.

Senator LAUSCHE. I have to go to a meeting of the Foreign Relations Committee. I assure the witnesses who are to follow that I will have read their statements before we take the matter up with the committee.

Mr. Pearson will continue the meeting.

Senator PEARSON (presiding). Thank you, Senator Lausche.

Our next witness is J. L. Person, brigadier general, executive vice president, National Rivers and Harbors Congress.

**STATEMENT OF J. L. PERSON, BRIGADIER GENERAL, U.S. ARMY
(RETIRED), EXECUTIVE VICE PRESIDENT, NATIONAL RIVERS
AND HARBORS CONGRESS, WASHINGTON, D.C.**

General PERSON. Thank you.

I am Joe L. Person of Washington, D.C., executive vice president of the National Rivers and Harbors Congress. This association, organized in 1901, is a nonprofit corporation dedicated to the full development of the water resources of the Nation for all purposes, including navigation, flood control, irrigation and reclamation, municipal and industrial water supply, pollution abatement, water quality control, hydroelectric power, recreation, fish and wildlife, and related water uses.

Our membership includes State and local governmental agencies, agricultural groups, industries, shippers, financial institutions, merchants, civic groups, and individual citizens in all 50 States.

In the field of navigation, we are gratified by the tremendous strides made in the development of our inland waterways and by the ever-increasing use of these waterways to the benefit of all phases of the Nation's economy.

Our interest in S. 1314 stems from the fact that a recent court decision holds that unless the obsolete language of the present act is changed, present practice permitting full use of large tows on the inland waterways would have to be drastically curtailed. The result would inevitably diminish the utilization of the inland navigation facilities, developed through the years, at the expense of the taxpayer for the benefit of the taxpayer.

The elimination by the enactment of S. 1314 of two provisions of the present bill, both of which have been aptly described by the chairman of the Senate Committee on Commerce as archaic and restrictive, would eliminate this threat to the full use of our inland waterways and consequently to the full realization of the benefits of inland navigation to which our people are entitled.

We strongly urge enactment of S. 1314. I appreciate the opportunity to present this statement.

Senator PEARSON. Thank you very much, General.

Perhaps you know, the association—and this is a parochial comment: We have a study underway now to build a navigable stream from Tulsa, Okla. to Wichita, Kans. I don't believe many people think about the inland waterways in the State of Kansas, but we are very much aware of it. We do a great deal of barge traffic out of Kansas City. We very much appreciate your comments and your statement here. I don't have any questions.

General PERSON. Thank you, sir.

Senator PEARSON. Mr. Cassady, executive vice president, Mississippi Valley Association.

We are pleased to have you here.

STATEMENT OF E. MICHAEL CASSADY, EXECUTIVE VICE PRESIDENT, MISSISSIPPI VALLEY ASSOCIATION, ST. LOUIS, MO.

Mr. CASSADY. Thank you very much.

I have a prepared statement which I am not going to take the time to read. Some of the information contained in it has already been expressed by others. There are, however, two points in the statement that I would like to mention. One is the fact that this bill will be of particular benefit to the smaller shippers on the inland waterways.

In the past month, the Maritime Subsidy Board of the Maritime Administration has authorized American flag line steamship companies to request bids on new barge-carrying type ships, and invitations are now out to shipbuilders to bid on the construction of these barge-carrying deep-water vessels with their attendant barges.

An example of how the modernization of section 303(b) of the Interstate Commerce Act is needed and would be beneficial is the authorized barge-carrying type ships of Lykes Bros. Steamship Co., Inc., called Seabees. Each of their ships will carry 38 loaded barges on Lykes Bros. Essential Foreign Trade Route 21 Service, Gulf to United Kingdom and Continental Europe. In all, Lykes will build 266 barges to service the three ships authorized to them. It is anticipated that these Lykes barges will be accumulated from and distributed to many interior ports on the Ohio, Illinois, Missouri, and Arkansas Rivers, and other tributaries of the Mississippi River.

The same application applies to the "lighter aboard ship" principle which has been authorized to be built by Prudential Lines, Inc. and Pacific Far East Lines, Inc. for operation in the U.S. Atlantic-Mediterranean trade and the transpacific trade, respectively. With the multiplicity of cargoes anticipated to be moved in these barges over the interior waterways of the country and then by ship to foreign destinations, and in the reverse movement, it would indeed be shortsighted to limit the number of commodities that could be moved in one tow whether they be exempt commodities or other.

Essentially this restriction would virtually eliminate the advantages of these new technological changes in these ships.

I say again, Senator, we certainly support this legislation and hope that the subcommittee can act on it promptly.

Senator PEARSON. Thank you, Mr. Cassady. That is our intention.

I appreciate your summary of the statement. I will incorporate the statement in its entirety into the record, together with the list of those members of the traffic advisory committee of your association.

Mr. CASSADY. Thank you very much, sir.

(The prepared text by Mr. Cassady follows:)

STATEMENT OF E. MICHAEL CASSADY, EXECUTIVE VICE PRESIDENT, MISSISSIPPI VALLEY ASSOCIATION, ST. LOUIS, MO.

Mr. Chairman, my name is E. Michael Cassady. I am Executive Vice President of the Mississippi Valley Association with offices in St. Louis, Missouri.

Under date of June 7, 1967, Mr. Robert L. Shortle, Vice President of the Mississippi Valley Association of New Orleans, Louisiana, addressed a letter to Senator Magnuson setting out the position of the Mississippi Valley Association as reflected by the action taken by our Association at its 48th Annual Meeting in Chicago, Illinois, in February of this year. Because of the far reaching effect

of this legislation and the widespread interest of our membership in support of the enactment of S. 1314, it is our desire to amplify the position set out in Mr. Shortle's letter of June 7, 1967.

All of us, I am sure, recognize that conditions which existed in any field of transportation in 1939 or 1940 do not pertain today, and in no field of transportation are improvements in design, technological advances and greater efficiencies more apparent than in the towing industry on our inland waterways. At the time the restrictions were imposed by Section 303 (b) of the Interstate Commerce Act, waterway transport by barge was conducted in relatively small tows, generally box barges, being pushed by towboats of 1500 horsepower or less. Today those tows are completely outmoded as are the propulsion vessels. With propulsion units ranging up to 9000 horsepower pushing tows of 40 or more barges which may aggregate more than 40,000 tons of cargo, it is apparent that the restrictions imposed by Section 303 (b) of the Interstate Commerce Act are archaic and work to the disadvantage of virtually all shippers utilizing inland waterway transport.

The retention of 303 (b) as a Section of the Interstate Commerce Act, might have little effect on the very largest shippers since they could, by virtue of their financial resources, construct and operate their own inland waterway transport if they so desired. We know that many have already been forced to do so. However, the small shippers, without the financial resources which might permit a costly investment in expensive barges and towing equipment, would be at a definite disadvantage in availing themselves of the most efficient and economical transport. For example, a small shipper who only moves one barge per month of his products or raw materials could not move this barge in a tow already carrying three exempt commodities. His product or raw material might rest in a barge for some time before it could be moved to destination by water. The alternative would be to move the commodity by overland transport at rates far in excess of those by water. The benefits accruing to the small shippers with the enactment of S. 1314 are plainly apparent and obviously necessary.

In the past month, the Maritime Subsidy Board of the Maritime Administration has authorized American flag line steamship companies to request bids on new barge-carrying type ships, and invitations are now out to shipbuilders to bid on the construction of these barge-carrying deep water vessels with their attendant barges.

An example of how the modernization of Section 303 (b) of the Interstate Commerce Act is needed and would be beneficial is the authorized barge-carrying type ships of Lykes Bros. Steamship Company, Inc. called "Seabees". Each of their ships will carry 38 loaded barges on Lykes Bros. Essential Foreign Trade Route 21 Service, Gulf to United Kingdom and Continental Europe. In all, Lykes will build 266 barges to service the three ships authorized to them. It is anticipated that these Lykes barges will be accumulated from and distributed to many interior ports on the Ohio, Illinois, Missouri and Arkansas Rivers, and other tributaries of the Mississippi River. The same application applies to the "Lighter Aboard Ship" principle which has been authorized to be built by Prudential Lines, Inc. and Pacific Far East Lines, Inc. for operation in the U.S. Atlantic-Mediterranean Trade and the Trans-Pacific Trade respectively. With the multiplicity of cargoes anticipated to be moved in these barges over the interior waterways of the country and then by ship to foreign designations, and in the reverse movement, it would indeed be shortsighted to limit the number of commodities that could be moved in one tow whether they be exempt commodities or other.

Although it was mentioned in our letter of June 7, 1967, I repeat here the Platform statement that was developed first by the Traffic Advisory Committee of the Mississippi Valley Association, then approved by the Resolutions Committee and then by the membership as a whole. I might add that this resolution was approved at all levels of consideration without a dissenting vote:

INTERSTATE COMMERCE ACT AMENDMENT TO SECTION 303(B)

The Association supports proposed deletions in Section 303 (b) of the Interstate Commerce Act to remove the parenthetical language applying to the custom of the trade as of June 1, 1939 and striking the sentence reading: "For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel."

These changes are required to promote and extend the economies and benefits of technological improvements in the inland water transportation industry.

I am taking the liberty of attaching to this statement the membership roster of the Traffic Advisory Committee of the Mississippi Valley Association. It may be seen from this roster that many of the large industries of the United States are represented as well as a number of the smaller companies. Additionally, representatives of common carrier barge line companies, contract carriers, and private carriers are represented. This is truly a representative group that possesses the knowledge and background to properly advise us in transportation matters.

We respectfully urge your favorable consideration and approval of S. 1314 and recommend its enactment at the earliest possible time.

MISSISSIPPI VALLEY ASSOCIATION, TRAFFIC ADVISORY COMMITTEE, FEBRUARY 1967

Cochairmen:

A. C. Cocke, maritime consultant,
New Orleans, La.

Gerald Franzen, Chicago Association
of Commerce and Industry,
Chicago, Ill.

Secretary:

Robert L. Shortle, vice president,
Mississippi Valley Association

V. J. Angell, Mississippi Valley Barge
Line, St. Louis, Mo.

S. P. Baker, Oklahoma City Chamber of
Commerce, Oklahoma City, Okla.

Walter Baskerville, Upper Mississippi
Towing Co., Minneapolis, Minn.

J. Clarke Berry, Canal Barge Co., Inc.,
New Orleans, La.

George Bicknell, Farmers Union Co-
operative Marketing, Kansas City,
Mo.

Donald Bidgood, Continental Grain Co.,
St. Louis, Mo.

George Blohm, Cities Service Oil Co.,
New York, N.Y.

Iver Brecht, Grain Processing Corp.,
Muscatine, Iowa

Jesse Brent, Brent Towing Co., Inc.,
Greenville, Miss.

Cletus A. Broecker, Ayrshire Collieries
Corp., Indianapolis, Ind.

Richard J. Brown, Jr., Missouri Valley
Steel, Inc., Leavenworth, Kans.

Bartley J. Burke, Monsanto Co., El
Dorado, Ark.

Braxton B. Carr, American Waterways
Operators, Inc., Washington, D.C.

Arthur C. Collins, Jr., Sioux City & New
Orleans Barge Lines, Kansas City,
Mo.

James Collins, International Salt Co.,
Chicago, Ill.

E. J. Davis, Caterpillar Tractor Co.,
Peoria, Ill.

H. W. Dent, Shell Oil Co., New York,
N.Y.

W. J. Edmonds, Granite City Steel Co.,
Granite City, Ill.

W. N. Finch, Memphis Freight Bureau,
Memphis, Tenn.

E. Scott Finken, the Vendo Co., Kansas
City, Mo.

J. L. Gilbert, board of commissioners,
New Orleans, La.

Saul Greenstein, Inland Molasses Co.,
Dubuque, Iowa

T. M. Hogg, Greater Baton Rouge Port
Commission, Port Allen, La.

M. E. Iten, Monsanto Co., St. Louis, Mo.

William J. Hull, Water Resources Associ-
ated, Washington, D.C.

Sam L. Jackson, American Oil Co.,
Chicago, Ill.

Gordon Jones, Alter Co., Davenport,
Iowa

E. Sam Jones, Peabody Coal Co., St.
Louis, Mo.

Elmer E. Kohlwes, Standard Milling
Co., Kansas City, Mo.

Rodney LaMothe, Mid-West Terminal
Warehouse Co., Kansas City, Mo.

Gary W. McKinney, C-G-F Grain Co.,
Atchison, Kans.

William McNeal, Oil Transport Co.,
Inc., New Orleans, La.

J. O. Madgett, Mid-West Terminal
Warehouse Co., Kansas City, Mo.

Wayne C. Mann, North American Car
Corp., Chicago, Ill.

Ben W. Martin, Bulk Terminals Corp.,
Chicago, Ill.

F. A. Mechling, A. L. Mechling Barge
Line, Inc., Joliet, Ill.

Raymond W. Meckfessel, Laclede Steel
Co., St. Louis, Mo.

M. E. Midgley, Nilo Barge Lines, Inc.,
St. Louis, Mo.

Ross E. Mortimer, the Great Lakes
Towing Co., Cleveland, Ohio

William K. Nestor, Arrow Transporta-
tion Co., Sheffield, Ala.

Paul Newsome, Consolidated Blenders,
Inc., Fremont, Nebr.

P. Pella, Marquette Cement Manufac-
turing Co., Chicago, Ill.

Leonard Peterson, Northern States
Power Co., Minneapolis, Minn.

Frank Rankin, Gold Proof Elevator Co.,
Louisville, Ky.

T. E. Richards, John Deere Dubuque
Works, Dubuque, Iowa

Cliff R. Rickel, Armco Steel Corp., Kan-
sas City, Mo.

Louis A. Schwartz, New Orleans Traffic & Transportation Bureau, New Orleans, La.	A. H. Vail, A. L. Mechling Barge Line, Inc., Chicago, Ill.
D. T. Sheehy, Ohio River Co., Cincinnati, Ohio	C. H. Wager, Shell Oil Co., New York, N.Y.
Darrell H. Smith, Jr., International Salt Co., Clark Summit, Pa.	Rolland Wages, Northern Natural Gas Co., Omaha, Nebr.
Robert Strange, Consolidated Coal Co., Pittsburgh, Pa.	James T. Wakley, Ohio River Sand & Gravel Co., Parkersburg, W. Va.
W. C. Theis, Simonds-Shields-Theis Grain, Co., Kansas City, Mo.	Hugo Waninger, Anheuser-Busch, Inc., St. Louis, Mo.
Donald Tidmore, Tulsa Chamber of Commerce, Tulsa, Okla.	E. J. Weigel, Nebraska-Consolidated Mills, Omaha, Nebr.
Fred Tinker, Big Soo Terminal, Sioux City, Iowa	David A. Wright, National Marine Service, St. Louis, Mo.

Senator PEARSON. Mr. William J. Hull, counsel for the waterways Association of Pittsburgh, Washington, D. C.

STATEMENT OF WILLIAM J. HULL, COUNSEL FOR THE WATERWAYS ASSOCIATION OF PITTSBURGH, WASHINGTON, D. C.

Mr. HULL. Mr. Chairman, Mr. Mack was unable to attend because of illness and asked me to present his statement for the record.

Senator PEARSON. That is quite all right. We are glad to have you.

Mr. HULL. Mr. Chairman, I think it would be adding unnecessarily to the time burden of the committee for me to read these two statements.

The essential theme of the statement of the Waterways Association of Pittsburgh, and of the Ohio Valley Improvement Association, is the same; namely, that the elimination of the artificial restrictions in the present law, particularly as interpreted by recent judicial and administrative decisions, would be a very constructive step in the direction of assisting to make available to the shipping public and to the economy generally the full values of the improvements to the waterways system which have been provided by the Congress over many years, and also to make fully applicable the technological developments which have occurred in the barge and towing industry in recent years.

We strongly, both associations, have asked me to say that they strongly endorse the passage of S. 1314 and to express the hope that the committee will see fit to recommend the legislation to the Congress.

I have one further duty, Mr. Chairman, and that is to ask that the record show the support of the legislation by Chotin Transportation Co. of New Orleans.

I would appreciate it very much if the statements of the Waterways Association—

Senator PEARSON. Both your statement and that of Mr. Mack will be incorporated into the record in full.

Yesterday Senator Scott had an opportunity to be present, and he made a motion formally, a contribution to be added to the record showing certain statistics of barge traffic from Pittsburgh.

Mr. HULL. Thank you very much, sir.

(The prepared statements referred to follow :)

STATEMENT BY ARTHUR J. BROSIUS, PRESIDENT THE WATERWAYS ASSOCIATION OF PITTSBURGH

Mr. Chairman and members of the subcommittee, my name is Arthur J. Brosius of Pittsburgh, Pennsylvania. I am President of the Waterways Association of Pittsburgh with offices at Suite 703, Standard Life Building, Pittsburgh, Pennsylvania. This Association, formerly the Pittsburgh Coal Exchange which was incorporated in 1870, is actively engaged in the study and the promotion of waterways development for navigation flood control, conservation and low-flow augmentation.

Pursuant to a resolution unanimously adopted by its Board of Directors, the Association gives its full support to S. 1314 and similar legislation.

As a result of restrictive judicial interpretations of Section 303(b) of the Interstate Commerce Act, the scope of the statutory exemption applicable to water transportation of dry bulk commodities has been severely curtailed, effectively preventing the movement of bulk and regulated commodities in a single tow. Thus the attainment of the potential for low-cost, mass movements of commodities provided by governmentally improved waterway systems and the remarkable technological advance, in the form of greatly increased motive power and efficiency, made by the private industry in the post-war period is obstructed and the benefits to the public both of governmental programs and of private investment are curtailed. The limitation to three of the number of bulk commodities which may move exempt from regulation in single tow of barges, as distinguished from a single barge or other vessel, is similarly inconsistent with full utilization of modern technologies and waterway capacities. The outmoded provision of existing law limiting the exemption to commodities handled and transported in bulk in accordance with June 1, 1939 trade custom also operates to handicap full utilization of capabilities.

S. 1314 could constitute an important and constructive step in assuring to shippers and consumers the potential benefits of improved waterways and modern techniques in shallow-draft vessel transportation. We strongly recommend its passage.

STATEMENT OF HARRY M. MACK, CHAIRMAN OF THE BOARD OF TRUSTEES, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

Mr. Chairman and members of the subcommittee, my name is Harry M. Mack of Cincinnati, Ohio. I am Chairman of the Board of Trustees of the Ohio Valley Improvement Association, Inc. This Association, organized in 1895, is a non-profit corporation of the State of Ohio, dedicated to the development and more effective use of water resources in the Ohio River Basin, including particularly improvement of navigation facilities, domestic and industrial water supply and flood control. Its membership includes agricultural groups, and industries such as coal, oil, steel, aluminum, chemicals and power, as well as shippers, banks, river operators, merchants, civic groups and individual citizens who support its work and program.

The Board of Trustees of the Association has unanimously adopted a resolution to give its full support to S. 1314 and similar legislation.

For 72 years, the Association has supported the development of water resources in the Ohio River Valley, recognizing that industrial growth and economic prosperity rest squarely on the continued improvement of these resources. A key element in this program is the modernization of navigation facilities on the Ohio River begun in 1954 to replace 46 obsolete locks and dams with 19 modern structures adequate for increasing traffic volumes.

The prospect of transportation economies and related water supply improvements inherent in this program has been a major factor in the phenomenal industrial growth which has occurred during the post-war period in the Ohio Valley. Since 1950, according to this Association's most recent survey, more than 25 billion dollars has been invested in new and expanded industrial plants in the counties bordering the Ohio River and its navigable tributaries.

The effective translation of the values of these improvements into meaningful transportation economies is, of course, dependent upon the efficient operation of barges and towing vessels. During the post-war period the development, through application of advanced technologies, of increasingly powerful towing vessels pushing ever larger flotillas of barges has brought the benefits of river improvements home to America. These benefits have been especially evident in the form of reduced costs of electric power, gasoline, food stuffs, household appliances and countless other consumer goods, as well as in the form of industrial growth accompanied by expanded job opportunities and a rising tax base for local communities. The combination of governmentally provided waterway improvements with the technological advances and competitive vigor of the barge and towing vessel industry represent an ideal partnership of government and private industry for the public good.

In its present form, particularly as interpreted by recent judicial and administrative decisions, however, the exemption provided for water carriage of bulk commodities under Section 303(b) of the Interstate Commerce Act operates in effect to prohibit combinations of barges into flotillas of appropriate size. Thus the economies of scale made possible by river improvements and technological advances are seriously curtailed; the objectives of both public and private investment are frustrated and public benefits reduced.

The bulk commodity exemption in its present form is defective also, we submit, in limiting its coverage to commodities handled and transported in bulk in accordance with trade custom as of June 1, 1939. Since that time the range of commodities handled in bulk has been greatly expanded by improvement in the design and construction of barges and by development of many new products capable of bulk handling and transportation. The limitation to the practices of a date long past prevents full application of modern technology and, without any rational basis in fact or policy, excludes important and growing volumes of commerce from the benefits of the exemption.

The pending legislation would remove these artificial restrictions and bring the law into harmony with modern conditions. Thus it would contribute substantially to the enhancement and diffusion to public benefits resulting from waterway improvements and technological developments in the barge and towing vessel industry. We strongly urge the passage of S. 1314.

Senator PEARSON. Mr. Breithaupt, we are pleased to have you here, sir.

STATEMENT OF HARRY BREITHAUP, GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS, TRANSPORTATION BUILDING, WASHINGTON, D.C.

Mr. BREITHAUP. Thank you, sir.

Mr. Chairman, let me say briefly for the record that my name is Harry J. Breithaupt, Jr., and I am general attorney of the Association of American Railroads, with offices in Washington, D.C. The Association of American Railroads, speaking for its member railroads, opposes S. 1314. I want to assure the chairman and the subcommittee that despite the record made here so far during the course of this hearing, there are two sides to the story.

It does not seem to me that it would serve any particularly useful purpose for me to trace and recount the long history of the Commission proceedings and court decisions which have brought the bargelines to their present pass. (Mississippi Valley Barge Line Co. exemption, sec. 303(b), 311 ICC 103 (1960), sustained sub nom. *Gulf Canal Lines, Inc. v. United States*, 258 F. Supp. 864 (S.D. Tex. 1966), aff'd per curiam, No. 947, October term 1966, Supp. Ct., Mar. 20, 1967. See also *Commercial Transportation Corp.*, 300 ICC 66 (1957), sustained sub nom. *Commercial Barge Lines, Inc. v. United States*, 166 F. Supp. 867 (E.D. Mich. 1958), aff'd per curiam, 359 U.S. 342 (1959); *American Barge Line Co.*, 294 ICC 796 (1955), and the cases there cited.)

Stripped of all complexities and lengthy reasoning, and reduced to bare bones, the situation is that the Interstate Commerce Commission and now the courts—including the Supreme Court—have said that section 303(b) of the Interstate Commerce Act means just what it says; that is, that in order to avail themselves of the exemption from regulation contained in section 303(b) water carriers must transport not more than three bulk commodities in a single tow and must refrain from mixing bulk and nonbulk commodities in the same tow.

As shown of all complicated explanation and statements of justification, the bargelines' clear objective simply stated is to remove these statutory limitations so that they may enjoy exemption from regulation in the carriage of bulk commodities irrespective of whether more than three such commodities are transported in a single tow and without regard to the mixture of bulk and nonbulk commodities in the same tow. They seek, for inland waterway operations, what is tantamount to outright repeal of the so-called mixing rule.

The railroads are compelled to resist this effort on the part of the water carriers because of the adverse competitive effect that liberalization of the regulatory exemption afforded water carriers in the transportation of bulk commodities would have upon the railroads. The present exemption discriminates against the railroads. To broaden the scope of that exemption, by removing the existing limitation upon its applicability, would aggravate what is already a blatant discrimination.

As the law now stands, bargelines may transport bulk commodities free of any economic regulation whatsoever, provided only that not more than three such commodities are carried in a single tow and that the bulk commodities are not mixed in the same tow with nonbulk commodities. The railroads on the other hand, in their competition for the same traffic, are required to establish rates that meet statutory standards of justness and reasonableness; to file and publish them for all the world—including competing water carriers—to see; to adhere strictly to those rates; to forgo any changes in them—absent special circumstances—except upon 30 days' notice; to observe the prohibitions and requirements of the long- and short-haul clause, and the aggregate of intermediates clause, in section 4 of the Interstate Commerce Act; and to avoid unjust or undue discrimination, preference or prejudice.

The bargelines, when performing transportation exempt under section 303(b) of the act, are subject to none of these restraints and are privileged to make whatever rates they choose to make, at any time, without notice to anyone and without publication, or whatever basis they regard as necessary to obtain the traffic.

You can see the competitive disabilities to which the railroads are subjected by reason of this freedom the bargelines have. It is an intolerable competitive situation for the railroads. Just yesterday the chief spokesman for the water carriers, Mr. J. W. Hershey, quoted with approval remarks attributed to Everett Hutchinson—then Chairman of the Interstate Commerce Commission; now Under Secretary of Transportation—in 1961 as follows:

If we (the common carrier barge lines) published all our rates, he said, "the advantage thus gained by the unregulated carriers becomes readily apparent. They need only examine the published tariffs of the regulated carriers in order to determine how low they must place their quotations to the shipper in order

to obtain the traffic. This is a one-way street for the regulated carriers have no way of ascertaining the rates charged by the exempt carriers, who are not required to publish rates."

What he said about the impossible position in which this would put the regulated water carriers is equally descriptive of the impossible situation in which the railroads already find themselves in their competition with the water carriers for bulk traffic.

Surely the railroads have just cause for complaint and even greater cause for opposition to any proposal that would operate to enlarge the scope of the present exemption and thus increase and heighten the preferred position already occupied by the water carriers vis-a-vis the railroads in competition for bulk traffic.

Just yesterday Vice Chairman Tierney of the Interstate Commerce Commission, appearing before this subcommittee, said:

Since the railroads, which are the water carriers' principal competitors for bulk commodity traffic, have always been subject to full economic regulation by the Commission, we have recommended on a number of occasions that the exemption provided by Section 303 (b) be repealed in its entirety in the interest of providing equality of competitive opportunity and regulatory treatment among the several modes of transportation. . . . We continue to believe that the present exemption is neither conducive to fair and effective regulation nor to effectuation of the goals of the National Transportation Policy.

That is the Commission's assessment and appraisal of the present limited exemption. Yet you are being asked to broaden the present exemption, and thus provide even less equality of competitive opportunity and less equality of regulatory treatment. You are being asked to treat the railroads even more unfairly than they are treated under the law as it is written today.

The bargelines are hardly in a position to assert that they have been suddenly and catastrophically surprised by an unexpected and unforeseen turn of events. True, they may have hoped and undoubtedly did hope that the Supreme Court would reverse the lower court and the Commission, which had both condemned the practices that the proponents of this legislation are now intent upon perpetuating. But the fact is that ever since those practices were first instituted the bargelines have proceeded under a cloud, and they have known full well that they were proceeding under a cloud. They cannot very well allege surprise.

The method of bargeline operation now no longer available to the water carriers by reason of the Supreme Court's per curiam order of March 20, 1967 (No. 947, October term 1966, *Gulf Canal Lines v. United States*), affirming a decision of the U.S. District Court for the Southern District of Texas reported at 258 F. Supp. 864 (1966), was condemned by an order of the Interstate Commerce Commission entered in 1960 (*Mississippi Valley Barge Line Co. Exemption*, sec. 303(b), 311 ICC 103). Let me make it plain that it was this 1960 Commission order (administratively final in 1961) that was sustained by the district court at Houston and, ultimately, by the Supreme Court 3 months ago.

So the bargelines have known for a long time that what they were doing was highly questionable, in terms of statutory law, and that they might well have to reform their modus operandi.

Even beyond that, however, the lawfulness of the operating methods now struck down by the court of last resort was called into question at

their very inception. If my understanding is correct, the manner of operations in question was first proposed in a tariff, Agent E. H. Strobel's ICC No. A-1, issued June 12, 1959, to become effective July 16, 1959; and less than 2 months after the effective date of that tariff, in late August 1959, petitions were filed with the Commission by two groups of common carrier bargelines, one supporting and one attacking the legality of the proposed operations. Out of these petitions grew the Commission proceeding and lengthy litigation which, upon final resolution, now occasions consideration of the legislation to which this hearing is directed.

So, with this history, the water carriers cannot convincingly claim surprise. They gave it a good try; but they have been knowingly operating at their own peril all along, since the outset, and now they should cease. They say that the practices now condemned have become so routine and commonplace in their operations that they need time to adjust. The Commission has been quite generous in this regard, having issued an order just a month ago giving the water carriers until the first of next year "to conform their operations and otherwise comply" with its 1960 order of almost 7 years' standing. (Order of the Interstate Commerce Commission in No. W-C-5, Mississippi Valley Barge Line Co. Exemption, sec. 303(b), May 31, 1967.)

Nor can I sit silently by and, without protest, hear it said as an argument for enactment of S. 1314 that "the proposal would maintain the status quo and hence would not change present intermodal competitive relationships." (Letter of J. W. Hershey, of the Common Carrier Conference of Domestic Water Carriers, to Senator Warren G. Magnuson, chairman, Senate Committee on Commerce, Feb. 6, 1967—Congressional Record for Mar. 16, 1967, p. S3958.)

The railroads are not content that the "status quo" be maintained and that "present intermodal competitive relationships" be preserved. The railroads take the position that they have been harmed, and that they are harmed, by what has now been authoritatively determined to be—and from the outset to have been—an unauthorized course of conduct on the part of their bargeline competitors. We do not believe it would be the exercise of either sound or fair legislative judgment for the Congress to legitimize for the future a method of bargeline operation that has heretofore been unlawful, just because the bargelines conducting those operations have become accustomed to that way of performing their services, when the result would be to continue and to perpetuate the adverse competitive effect such operations have upon the railroads.

The railroads have never acquiesced either expressly or impliedly in those practices of the water carriers now finally found to violate the "mixing rule." On the contrary the railroads have consistently, and from the outset, inveighed against those practices. Numerous railroads were parties to the original proceeding before the Commission out of which came the order that, having been sustained in the courts, occasions the proposal the subcommittee is now considering; and those railroads took the position that the Commission should—as the Commission did—hold that the exemption in section 303(b) of the Interstate Commerce Act—the bulk commodity exemption—does not apply in the circumstances there presented.

After the Commission had reached its decision, this Senate committee—at the instance of some of the bargelines—held hearings on a proposal the effect of which would have been to suspend the operation of the “mixing rule” for a temporary period of 1 year. This was in 1961. The railroads vigorously resisted that proposal. I myself appeared in opposition, as did another witness for the Association of American Railroads. And time after time, beginning long before the water carriers embarked upon the particular method of operation they now say they must have legislative sanction to continue so that their business will not be disrupted, and continuing right up to the present, we have expressed to this Senate committee and to its House counterpart committee our deep-seated dissatisfaction with the discrimination against the railroads that exists by reason of the water carrier bulk commodity exemption itself—without any broadening, such as now proposed, of that exemption.

We certainly object to, and take issue with, the argument that the scope of the water carrier bulk commodity exemption should be substantially enlarged in order to make lawful methods of bargeline operation that are now unlawful, on the stated justification that to do so “would maintain the status quo and hence would not change present intermodal competitive relationships.” The “status quo,” let it be understood, is an unlawful “status quo.” We say that the statute should not be adapted to the water carriers’ unauthorized practices but, rather, that the water carriers’ operations should be made to conform to the statute.

To follow the bargelines’ philosophy would, frankly, be to award them the fruits of their own transgression. It would, again frankly, be saying to the railroads:

You have lived with this situation for several years and, while it has now been determined once and for all that it is a situation against which the law should have protected you, you have nevertheless learned to live with it; therefore, rather than interfere with what your competitors have come to think of as their due, you’ll just have to accept a change in the law and continue as best you can to live with it.

I have refrained from mentioning it heretofore and I hesitate—because it is technical and tedious—to go into it now, but I must at this stage point out that the legislative proposal embodied in S. 1314 goes far, far beyond what would be needed to overcome the Commission’s 1960 order upon which, as upheld by the courts, the proponents of the bill principally base their case for relief. In the interest of avoiding lengthy elaboration on this aspect of the matter, I shall merely suggest to the subcommittee that if it decides to report S. 1314 or similar legislation—and naturally I hope it does not—consideration ought to be given to amendments that would restrict the effect of the bill to the specific purpose for which the subcommittee judges a case to have been made out.

As drafted and introduced, S. 1314 is far reaching indeed, and would have sweeping consequences. It would, in fact, do a lot more than “maintain the status quo.” I should not like, for the brevity of my comment on this feature of the bill, to be taken as an indication that I attach little importance to it. On the contrary, I attach a great deal of importance to it.

I suspect the bargelines are being overly pessimistic when they contend that their technological development will be impeded and stifled,

and even that their present technology will be rendered largely useless and meaningful, if this bill is not passed. I think they exaggerate on that score, for the real issue here is not whether the bargelines are to be permitted to perform certain transportation services or prevented from performing those services. It is, rather, whether those particular services are to be performed by the bargelines under regulation or free of regulation.

I fear, Mr. Chairman, that there has been some misunderstanding on this score, at least on the part of some of the witnesses that have appeared before the subcommittee. And as illustrative of that misunderstanding of what the situation really is, and I assume it is a misunderstanding rather than mere sophistry or fatuous argument, I take the statement made this morning by the first witness to appear today, the witness representing the National Industrial Traffic League. In his prepared statement, which is just about verbatim of the statement that he made orally, he said, that if this legislation is not enacted the bargelines really have only two alternatives. The first of those alternatives—paraphrasing him, but not very much—is to delay the accumulation of tows in order to achieve optimum size or to release tows with less than the optimum number of barges. He said that this second alternative would be to operate with smaller, and therefore less efficient, tows.

He overlooks the fact, and I hope the subcommittee will not overlook the fact, that there is a third alternative; and that is to do what the railroads do, operate under regulation with respect to the transportation of bulk commodities. Let that, if you please, not be overlooked.

The services in question, if they are needed, will continue to be performed—albeit under regulation; and my guess would be that the river technology of which the water carriers are understandably proud will find full utilization.

It is at this juncture, however, that those who favor this bill advance what I take to be their principal argument. They say that the enactment of this legislation is needed in order to allow the barge lines to realize greater efficiencies and economies in their operations than they would be able to realize without its enactment. They say, indeed, that its enactment is needed in order to permit the bargelines to retain operating efficiencies and economies that they have—through unauthorized methods of operation—already attained.

As to this I shall only say that it would be a rare and exceptional thing for any regulated industry not to entertain the view that it could accomplish a great deal by way of increased efficiencies and economies if only it could be freed from some of the shackles, burdens, and inhibitions of regulation. The regulated industries are probably right about this in a great many instances. I know that the railroads feel that way about certain aspects of their own regulation. However, as Judge Brown of the Fifth Circuit most aptly put it in writing the opinion for the three-judge Federal court upholding the very 1960 order of the Interstate Commerce Commission that was an early link in the chain of events inspiring this hearing today: "The price for bulk exemption is no mixing. The price may be high." (*Gulf Canal Lines, Inc. v. United States*, 258 F. Supp. 864, 873 (1966).)

The price is high; but, by the same token, the benefits of exemption are great. Beyond doubt, the barge lines feel that observance of the rule against mixing exacts too high a price for the bulk exemption.

I hope the subcommittee will keep in mind, however, that the advantages accruing to the water carriers from the bulk exemption are substantial; and the price to them of adherence to the statutory mixing rule is only one of the factors to be weighed in considering this bill. We think that the other considerations I have mentioned outweigh that factor.

The railroads urge that S. 1314 not be favorably reported.

That concludes my presentation, Mr. Chairman.

Senator PEARSON. Thank you for a very excellent statement.

I take it that although you would hesitate to speak of past philosophies and attitudes that go all the way back before my time, these regulations in the ICC Act are meant to serve the public. Because of the need for service rendered by the different modes of transportation, probably in the second priority, to have a fairness between barge lines, trucks, railroads and so forth, you develop the case regarding surprise to some extent. I don't discount it. I think primarily it is for the public good and fairness between barges and railroads, so to speak.

What actually, aside from the general statement you made, would be the prospective loss, particularly with regard to the traffic, if we report and pass S. 1314? You will have to do it in a sort of elementary way because I am not an expert in this field.

Mr. BREITHAUP. You mean the prospective loss to the railroads through enactment of this bill?

Senator PEARSON. Accept the proposition that one carrier has greater regulation than another carrier and is at a disadvantage. I would like for you to outline, if you desire, with particularity, what disadvantages you have with reference to actual traffic lost.

Mr. BREITHAUP. Let me say by way of background to what I will next say, bulk commodity traffic is the very backbone of the railroad industry's business.

Senator PEARSON. It is the mainstay. I know about that.

Mr. BREITHAUP. That is, the bulk commodities we are talking about here today.

As recently as a couple of days ago I had our statisticians give me a little information about this on the basis of—I thought I knew the figures but I wanted to have the most recently available figures and those figures confirmed what I thought to be the case. That was that in the year for which the most recent complete figures are available, to wit, 1964, some 68 percent of the total traffic transported by the railroads was of the kind of bulk commodities we are talking about in connection with this bill. I am leaving out liquid bulk, which is not involved in the present controversy. I am leaving out anything which would not qualify for the bulk commodity exemption in issue here, and qualify from the standpoint of being a bulk commodity without regard to whether it is mixed or not mixed with something else.

The principal commodities in that regard are some of those as to which witnesses have had enough interest to appear during the course of this hearing, notably coal, chemicals and allied products, cement, coke, metallic and nonmetallic ores, field crops, including grains such as your suggested. Those are perhaps the principal ones.

In all candor, Mr. Chairman, it is impossible to say that this total 68 percent of our traffic is subject to competition with the barge lines.

It is not so subject in a great many instances for any one of a number of reasons, the most obvious one being that it might not be geographically competitive; it might not be moving along railroad tracks parallel to waterways from origin to destination. By the same token it might be a type of commodity as to which the railroads couldn't make a rate competitive with the barge lines because the shipper of the commodity and the receiver of the commodity are not in a hurry for receipt of the shipment or for other reasons are willing to accept what is probably a less desirable service for movement of the commodity. And there may be other reasons which prevent the traffic from being competitive.

Senator PEARSON. Pardon me. As one who worked on the box car exchange for 3 years, we got calls 40 times a day during the harvest seasons, and there are a lot of other problems involved.

Mr. BREITHAAPT. There may be other reasons why the traffic is not subject to competition between the rail lines and water carriers; and I cannot get the figures any more definitively than I have given them.

Senator PEARSON. That is helpful. I want to know specifically what the areas are, what the subject matter is.

Mr. BREITHAAPT. That in a general way is the area and subject matter.

Senator PEARSON. As I recall, the ICC, although their preferred view would be to repeal the entire section, did support this particular bill?

Mr. BREITHAAPT. They reiterated their position for outright repeal of the section. They said there is a large public sentiment, they judge, against it. They knew that was known to the Congress. And if the Congress was of the view that discrimination between and among certain classes of barge carriers required legislation, despite the fact the whole thing was one big discrimination, it was kind of in the laps of Congress as I understood Vice Chairman Tierney.

What has been sadly overlooked during these hearings, in speaking of the discrimination between and among types of barge carriers, is that the forgotten man is the railroad who is already subject to discrimination without change in the law, you will enhance and aggravate that discrimination if you pass this bill.

Senator PEARSON. You dispute the need—these questions were prepared by staff and I will put them to you and give you an opportunity to make a full case.

The first question: Do you dispute the need outlined by water carriers and shippers to change section 303(b), as interpreted by the Commission and by the courts—

Mr. BREITHAAPT. I do. For the reasons that I have tried to state.

Senator PEARSON. Let me finish the question.

Mr. BREITHAAPT. Excuse me.

Senator PEARSON (continuing). In order that larger tows can be utilized?

Maybe I should reread the question: Do you dispute the need outlined by water carriers and shippers to change section 303(b), as interpreted by the Commission, in order that larger tows can be utilized?

Mr. BREITHAAPT. I do dispute that, even with that qualification, for this reason: Mr. Hershey and other witnesses for the barge carriers have said if the law is not changed traffic will not leave the rivers and canals and will not come to the railroads. I don't agree with that,

either. Assuming that to be true, however, it means it is going to move on the waterways—it is going to move on the waterways and has to move in one of two ways: regulated or unregulated. If it is regulated there is nothing to prevent them doubling the number of barges in these tows.

Senator PEARSON. Would there be any validity for those on the other side of the question to say there is no economic bar to longer railroad trains?

Mr. BREITHAUP. That there is no economic bar?

Senator PEARSON. Yes.

Mr. BREITHAUP. I don't think there is any economic bar. Well, I don't know about the economics of the engineering.

Senator PEARSON. Maybe I oversimplified it. I was trying to equate the propulsion of longer barges versus longer trains.

Mr. BREITHAUP. If their technology as an economic and physical matter permits the use of large barge tows, the question is whether the traffic in those tows is regulated or free of regulation. I can't answer whether we are in a position from the standpoint of engineering and physics, so to speak, to have any longer freight trains than we have today, I assume that our technology is being utilized to the maximum I have to make that assumption.

So I suppose that where the demand for transportation exists, we are using freight trains as long as engineering capabilities will permit.

Senator PEARSON. The next question I have here seems to be a little involved. I will read it: Is it your position that the railroad industry would suffer a loss of traffic unless a change is also made in the railroad economic regulatory statutes? Or is your position that as a matter of philosophy the railroad regulatory statutes should be changed whenever the economic regulatory statutes affecting other modes are also changed?

Mr. BREITHAUP. I reject the latter of those two alternatives. We are not a dog in the manger about this thing or any other public policy. We don't oppose legislation which would be beneficial to another form of transportation just because we think that our self-interest might be furthered by holding them down. That is not the way we look at policy matters of this kind, I utterly reject the second part. As to the first suggestion, that it is my position that we would lose traffic to the barges if this bill is enacted, there are two parts to the answer. The first as I tried to explain in my prepared statement, is that what is now being done will have to be rolled back if legislation is not enacted. Their method of operation, from the standpoint of what is regulated and what is not, will have to be rolled back.

Presumably that will put on the competitive market, available to the railroads for competition in transportation, some traffic that we don't know about. We don't know what is being hauled now because the rates are not published. In addition it is only reasonable to assume on the basis of all the predictions we get from the Department of Commerce, the Department of Transportation and economists generally, that transportation services of the country are going to grow and grow as the national economy grows and grows.

I presume in a sense we will be losing traffic, if this legislation should be enacted, in that additional volumes of traffic will be subject to these secret and unknown rates that are available under the exemp-

tion, and a greater proportion of which would become available under the exemption if these limitations on the availability of the exemption are not permitted to remain in effect.

Senator PEARSON. Maybe I can get at it another way.

Is it your position that 303(b) should not be changed, or is it your position that if we do change 303(b) we likewise ought to change regulations—

Mr. BREITHAUP. I understand that to be a slightly different question. The answer to that, Mr. Chairman, is this: The railroads and others have repeatedly pointed out that the unequal regulatory situation which exists and has existed, created by the bulk commodity exemption, could be remedied either by removing railroad minimum rate control on bulk commodities which operates to prevent real competition, or by repealing the bulk commodity exemption outright, that is, removing the exemption for the water carriers. That has been repeatedly urged.

I feel that repeal of the bulk commodity exemption, wiping it off the statute books, together with provision of at least a measure of greater freedom in competitive ratemaking for all types of carriage, including barges and railroads under regulation, would be a fair and equitable solution. That would make for uniformity of regulation as among the several modes and for equality of competitive opportunity as among the several modes. But it would do so under somewhat relaxed rate regulation, which ought to benefit both modes in their competitive efforts.

What the staff had in mind, I should imagine, is that we have said on occasion in the past that the best solution, we thought, speaking generally—

Senator PEARSON. Is your position today inconsistent with past positions?

Mr. BREITHAUP. No. We have made the general statement in the past, however, that perhaps a good solution would be to extend the bulk commodity exemption to the railroads. We went through this cycle just a few years ago. The late President Kennedy, in a well-known transportation message which he submitted to the Congress and to the American people in—I believe—1962 recommended that this as well as other regulatory inequalities be remedied by repealing the exemption for those presently exempt or by extending the exemption to those who don't enjoy it. I don't know if you remember, Senator Pearson, but a lot of people do remember the terrible legislative battle there was on that score. We supported that legislation which ultimately took the form, primarily—I will say—on the House side, primarily took the form of proffering a kind of limited extension of this exemption to the railroad; but among our principal opponents were these people who want this legislation.

Senator PEARSON. I arrived in 1962. I didn't know which battle to look at first.

Mr. BREITHAUP. I can understand that.

Senator PEARSON. This has been very helpful.

As you say, there are two sides to every question. I think you have very ably presented that of the Association of American Railroads.

Mr. BREITHAUP. Thank you, Mr. Chairman.

Senator PEARSON. This concludes the witness list we have for today and for yesterday. I want to thank everyone. You have been of serv-

ice in coming here yesterday and today to help the committee arrive at a good solution.

I will conclude these hearings by indicating that the record will be held open until July 7 for the receipt of additional relevant material.

The subcommittee welcomes any additional information concerning any testimony people with interests here would like to submit.

This hearing stands adjourned.

(Thereupon, at 10:48 a.m., the subcommittee was adjourned.)

STATEMENT OF WILLIAM S. STORY, EXECUTIVE VICE PRESIDENT, INSTITUTE OF SCRAP IRON & STEEL, INC.

I am William S. Story, executive vice president of the Institute of Scrap Iron & Steel, Inc. (Institute) and make this statement in support of Senate Bill 1314 which would permit water carriers to haul tows mixed with regulated and unregulated commodities. The Institute is a trade association consisting of over 1300 of the major shippers of scrap iron and scrap steel in the United States, having its headquarters at 1729 H. St., N. W., Washington, D. C. 20006.

During 1966 the water carriers hauled in excess of 2,000,000 net tons of scrap iron according to my best estimation. As substantial shippers of scrap iron by water, our industry is vitally affected by Senate Bill 1314 which will aid in retaining water freight rates at their present levels. Unless Senate Bill 1314 is adopted, it is likely that water freight rates will be needlessly increased without corresponding benefit to shippers.

The Institute favors the continued hauling of regulated and unregulated commodities in the same tow for the following reasons:

1. It permits more efficient utilization of equipment at a time when there is a critical shortage of both equipment and capital funds to purchase additional equipment.

2. The movement of all commodities will be expedited. Conversely, if segregated movements are required, commodities will be unnecessarily delayed.

3. The water carriers can operate larger tows, thereby achieving cost savings which are passed along to the shipper. Segregated movements necessitate smaller tows with the result that costs and eventually rates will be increased.

Clearly, a policy requiring segregated shipments is a policy of waste. It would be just as illogical to require the rail carriers to segregate and make separate shipments of freight and passengers.

The scrap industry is economically depressed primarily because innovations in steel making make iron ore and pig iron a more preferable commodity than scrap iron.

Because of a deep concern for highway beautification, Congress enacted the Highway Beautification Act of 1965 (23 USC 136) which authorizes an expenditure of up to twenty million dollars in each fiscal year ending June 30, 1966 and 1967. The scrap industry is making a determined effort to further the Beautification Program by attempting to process wrecked automobiles and other metallic wastes into scrap iron suitable for re-melting into new steel. Every ton of scrap iron consumed not only eliminates the blight created by abandoned automobiles, but also conserves two tons of iron ore and one ton of coke and limestone, thereby preserving this country's natural resources.

It is essential, therefore, that every possible economic measure be employed and every incentive be utilized to stimulate the movement of scrap and that unjustified restrictions be eliminated. We urge the adoption of Senate Bill 1314.

STATEMENT OF PHILIP SPORN, PRESIDENT OF THE OHIO VALLEY ELECTRIC CORPORATION AND INDIANA-KENTUCKY ELECTRIC CORPORATION

My name is Philip Sporn. I am President of the Ohio Valley Electric Corporation (OVEC) and the Indiana-Kentucky Electric Corporation (IKEC). I appreciate this opportunity to testify today in support of S. 1314.

Transportation of fuel is a major factor in the cost of generating electricity. Electric companies, therefore, maintain a continuing interest in technological improvement in all modes of transportation.

The recent performance of the inland barge industry in developing more powerful towboats, larger tows and more economical movement of coal has been

most encouraging to those concerned with keeping the price of electricity down. Anything which lowers the cost of transportation of coal helps make electric power more economical.

Among the major beneficiaries of improved barge technology in the Ohio Valley is the U.S. Government.

Since 1952, OVEC and IKEC have supplied the electric power requirements of the Atomic Energy Commission's plant near Portsmouth, Ohio. During this period we have continually tried out best to control and reduce the cost of generating this power so that AEC can obtain its power requirements at the lowest possible cost. This power is produced at our electric generating plants which are fueled by coal transported by barge on the Ohio River; and the cost of such transportation is a major factor in the cost of generation.

Continuing improvements in the ability of water carriers to transport large volumes of commodities in single shipments have made barging a more and more economical method of transporting coal.

The construction presently placed on Section 303(b) of the Interstate Commerce Act by the ICC and the courts to the effect that the inclusion of any non-exempt commodity in a shipment of an exempt commodity removes the exemption from regulation on the whole could well thwart the economies gained (1) by the carriers (2) by us and (3) by our customers, including the AEC, through such improvements.

We believe S. 1314 will cure this situation and bring the law up to date. Accordingly, we support S. 1314 and strongly urge favorable action upon it by the Commerce Committee and the entire Congress.

CLINTON DEVELOPMENT CO.,
Clinton, Iowa, May 16, 1967.

Senator FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee, Senate Committee on Commerce, Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: Clinton Development Company is a non-profit corporation organized for the purpose of developing industry and commerce in our area. One of the very important and very critical things in this regard is river transportation. Its continued growth over recent years and the prospect of its further development accounts for much of our success in industrial development.

The recent decision of the Supreme Court regarding the mixing of regulated and exempt cargoes is a serious blow to us. In practical effect, the receivers of many products will be denied the economic benefits of low cost, modern barge transportation unless something is done about it.

We understand that legislation modifying Section 303(b) of the ICC regulations is under consideration in the form of Senate File 1314. We hope that it will receive favorable consideration. We urge that it receive prompt consideration and we ask that this letter be considered as a statement in support of the bill and that it be filed with your committee at the hearings.

Very truly yours,

HAROLD L. KIRK,
Managing Director.

THE PROPELLER CLUB OF THE UNITED STATES,
Port of Paducah, Ky., May 16, 1967.

Hon. FRANK A. STUBBLEFIELD,
House of Representatives,
Washington, D.C.

DEAR MR. STUBBLEFIELD: At a called meeting of the Board of Governors of The Propeller Club Port of Paducah, the following resolution was adopted.

Whereas, the Propeller Club Port of Paducah, Ky. recognizes the important contribution the inland waterways barging industry makes to the economic well-being of our community, state and nation, and

Whereas, the inland waterways barging industry must be free to utilize all technological and operating advantages it develops to assure the industry's ability to maintain the economies inherent in water-borne transportation, and

Whereas, Section 303(b) of the Interstate Commerce Act as currently written, places boundless restrictions upon the industry and its efforts to continue its technological and operating advantages, and,

Whereas, Senate Bill S. 1314 has been introduced for the purpose of amending Section 303(b) of the Interstate Commerce Act to eliminate these restrictions.

Now, therefore, be it resolved that we the Propeller Club Port of Paducah, Ky. do hereby urge the support and passage of Senate Bill S. 1314.

The rapid industrial development of Kentucky in the past years and for the future is definitely attributed to the abundance of navigable inland waterways in the State of Kentucky. Unless some remedial legislation is enacted, we feel that the future industrial growth will be greatly hampered.

Sincerely,

ROBERT R. DAY, *President.*

HOUSTON PORT BUREAU, INC.,
Houston, Tex., May 31, 1967.

Hon FRANK J. LAUSCHE,

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

DEAR SENATOR: On behalf of Houston Port Bureau, Inc., a non-profit organization chartered under Texas laws for the purpose of protecting and promoting the movement of water-borne cargo from, to and through facilities of the Port of Houston in traffic and transportation matters I would like to solicit your aid, and that of the other Honorable Members of your Committee in supporting Senate Bill 1314, a bill seeking to amend Section 303(b) of The Interstate Commerce Act by updating its provisions to conform with present-day needs of our great inland waterways transportation system.

The large industrial metropolitan area of Houston, Texas with its population of in excess of 1,500,000 and its multi-billion dollar industrial development is served by Harris County-Houston Ship Channel Navigation District through a channel 40 feet deep and 400 feet wide extending inland from Galveston Bay 51.4 miles. This channel is connected directly with the vast inland waterway system which extends from Brownsville, Texas on the Mexican border along the Gulf of Mexico and around Florida and up the Atlantic Coast with its great inland river connections serving the Midwest and eastern part of the nation. Not counting local barge movement, over 12,000 barges carrying between 12,000,000 to 15,000,000 tons of cargo call at the Port of Houston each year. This cargo originates and terminates at the many cities and towns located along the waterways system. Many various types of manufactured products, as well as raw products, are dependent upon this long recognized low-cost transportation system for their movement, as are the many large industries who have located their plants where they have direct access to this type of service.

We, at the Port of Houston, feel that the inland waterways system is a very vital necessity to the economy and welfare of our area and to the many thousands of people who derive their livelihood from its economic and efficient operation, and its loss would have a serious effect upon our community. We know that in order for these barge lines to continue to maintain low transportation charges in the public interest under the every spiraling cost of present-day operation, they must, like the other competing modes of transportation, be permitted to take full advantage of technological advances in providing larger and better equipment and more efficient and economical power units to handle it. We believe that enactment of Senate Bill 1314 which is designed for the sole purpose of eliminating the obsolete provisions of Section 303(b) of The Interstate Commerce Act will accomplish this. As a matter of fact, the present restrictive provisions of Section 303(b) could be likened to a few years back when railroads were restricted to not more than 50 freight cars in a string as compared with in excess of 150 today, and motor carriers were restricted to minimum weights as low as 7,000 pounds whereas today their minimums exceed 50,000 pounds.

We feel that this bill is in the best interest of the general public and the industry of our nation, as well as to the benefit of this vital inland waterways system operation in providing low-cost transportation with an efficient and economical flotilla of barges handled by a power unit capable of performing this service.

We will appreciate your early consideration of this matter as well as the support of a favorable recommendation by your Honorable Committee in the enactment of Senate Bill 1314.

Respectfully submitted.

W. E. FINCHER, *General Manager.*

DETROIT STEEL CORP.,
 Portsmouth, Ohio, June 19, 1967.

Senator FRANK LAUSCHE,
 Chairman, Surface Transportation Subcommittee,
 Senate Building, Washington, D.C.

HONORABLE SENATOR LAUSCHE: I am writing you securing affirmative action on Senate Bill S. 1314, which I believe is scheduled for hearing by your subcommittee during the week of June 26, 1967.

The Portsmouth Division of Detroit Steel Corporation depends a great deal upon movement by barge for its shipments of inbound as well as outbound commodities. We have enjoyed the benefits of improved and specialized barge equipment made available by the water carriers during the past ten years. During this time, we have also received reduced barge load rates on our finished steel products.

These improvements and advances are due, in part, to the economies inherent in the movement of barge tows as handled by new and efficient high power boats of the water carriers.

We feel that the changes in the Interstate Commerce Act which would be brought about by passage of S. 1314 would be beneficial to the Commerce of the United States and to the general public as a whole. The operation of smaller separate tows of regulated and of extent commodities would increase cost to the shipping public, without benefits accruing to anyone. I, therefore, urge you to respectfully consider our request for the prompt reporting out of this bill from committee to the entire Senate.

Sincerely,

R. L. HIATT,
 Traffic Manager.

MARITIME TRADES DEPARTMENT, AFL-CIO,
 Washington, D.C., June 27, 1967.

HON. FRANK J. LAUSCHE,
 Chairman, Subcommittee on Surface Transportation,
 Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: I am writing you as President of the Maritime Trades Department, a constitutional department of the AFL-CIO, consisting of thirty-seven national and international unions all affiliated with the Federation. The Department represents the vast majority of employees in the maritime history and allied industries.

We strongly support S. 1314, a bill to modernize Section 303(b) of the Interstate Commerce Act, the so-called dry-bulk exemption. I do so for a very simple reason. The jobs of many members of my union are at stake if this bill is not passed. A substantial percent of the 80,000 members of the SIU work on the inland waterways and are directly affected by this bill.

There are others who will discuss the legal technicalities of this measure. I would like to emphasize the importance of this measure to our union.

Over the past 25 years we have watched the gradual transformation of the inland barge industry. From an industry worth little to itself and the nation's economy, it has grown and developed until today those who work on the inland barge lines are responsible for 14% of the tons handled in interstate commerce.

We have our differences with the managements of the barge lines, but we can testify that they are vigorous promoters of economical water transportation. As the industry has grown in strength, stability, and maturity, it has been able to provide more and increasingly better jobs for maritime workers.

One of the most remarkable accomplishments of the barge lines has been the continuing improvement of the technology. In the face of rising costs of everything we buy as consumers, barge rates have actually declined as a result of improved efficiencies on the waterways.

We are proud to participate in this growing efficiency and shocked to discover that the obsolete phrasing of a 1940 Act could be used to frustrate the advances which management and labor have jointly achieved.

The heart of the problem is the interpretation placed on Section 303(b) by the Interstate Commerce Commission and the courts. Part of the river business is regulated by the ICC; that is, it can only move on rates published with the Commission. So-called dry bulk commodities are not subject to regulation and can move without published tariffs.

According to the interpretations of the ICC and the courts, barges of regulated and nonregulated commodities cannot be mixed in a single tow. Years ago this made little difference because towboats didn't have the power to push very many barges. Today, modern developments have resulted in flotillas of 40 barges and more and the large volume has resulted in dramatic economies. We have here an example of the best type of business improvement. New technology increases productivity of both capital and labor, rates are reduced and the consumer benefits, a greater volume of business results, more and better jobs are created.

In the face of all the hypocritical nonsense that is talked across the face of the land about labor unions and compulsory arbitration, here is a living textbook example of the way our free competitive enterprise system—and let me emphasize *free collective bargaining*—should work. And what happens?

Someone in Government finds a way to shoot it down.

When a towboat goes down the river with a tow and the captain is asked to add another barge to his tow, someone has to count the number of commodities or try to figure out which barge has a regulated commodity to determine whether we can add the barge or not. The thing is ridiculous on the face of it. It is a form of sabotage of the free enterprise system which this Committee and this Congress should not tolerate for one minute longer than is necessary to report out S. 1314 and pass it.

May I respectfully request that my letter be inserted in the Record of your hearings.

Sincerely,

PAUL HALL, *President.*

THE HEekin CAN CO.,
Cincinnati, Ohio, June 20, 1967.

Senator F. LAUSCHE,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I am the Traffic Manager of The Heekin Can Company with home offices at 429 New Street, Cincinnati, Ohio. We are manufacturers of metal containers for industry and the food processors.

Both the can industry and food industry are highly competitive and vital to the general health and well being of this great country. As tinplate represents over 90% of the inbound tonnage requirements in the making of a tin can, any increased cost in this movement would ultimately end up in the cost of a can of peas, corn, tomatoes, etc. or any other of the myriad of foods or beverages packed in cans.

It is my understanding that Senate Bill S-1314 is to be heard before your Surface Transportation Subcommittee of the Senate Commerce Committee next week. The purpose of this bill is to allow the towage of regulated tonnage and exempt tonnage in the same tow.

Low cost barge operations are vital to the survival of our business and to the region in general. For some years the barge lines have made advances in technology enabling them to move larger and heavier tows. Also the Federal Government has spent millions of dollars in high level dams and larger locks to accommodate these tows. All of this advance would be lost unless S-1314 is passed. Without this legislation tows will be smaller and costs higher which would in turn be passed on to the general public. Furthermore, the separation of tonnage would benefit no one.

In view of the benefit to the public, both shipping and consuming, I ask that you look favorably upon this bill and lend your support for final enactment.

Thanking you.

Yours very truly,

R. C. BACHELDER,
Traffic Manager.

THE EARLY & DANIEL CO., INC.,
Cincinnati, Ohio, July 3, 1967.

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

DEAR SENATOR LAUSCHE: Referring further to our letter of June 23, copy attached, in regard to Senate Bill S. 1314.

Please accept our thanks for holding early hearing on this bill.

We respectfully request that the contents of our letter of June 23 be put in the record.

Yours truly,

C. B. SAUL,
Vice President, Traffic.

JUNE 23, 1967.

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

DEAR SENATOR LAUSCHE: I understand Senate Bill S. 1314 has been referred to your committee. In behalf of our company, I request that your committee give favorable consideration to this bill.

Our company buys and sells grain in large volumes. As part of our operations, we have two large terminal elevators located on the Ohio River at Cincinnati, Ohio and Louisville, Kentucky.

We know the public benefits because of low rates by water. We do not think the barge lines should be denied the technological improvements they have made to accumulate and handle big tows to hold costs to a minimum. Low rates in large volume by water are necessary to keep us competitive and to enable us to accumulate and distribute grain.

Yours truly,

C. B. SAUL,
Vice President, Traffic.

[Telegram]

FRANKFORT, KY., July 3, 1967.

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

Wish to express my strong support of S. 1314 and urge its approval. Section 303(b), as written, is technically obsolete and economically crippling. Deletion of parental expression will help industry realize important economies of scale leading to more efficient and more lower cost use of waterway transportation.

EDWARD T. BREATHITT, Governor.

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF COMMERCE,
Frankfort, July 3, 1967.

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

DEAR SENATOR MAGNUSON: As Kentucky Commissioner of Commerce, I strongly support Senate Bill 1314 which modernizes Section 303(b) of the Interstate Commerce Act. This revision is of importance to the economic development of the United States and of vital importance to those states with a direct reliance on water transportation. Kentucky is such a state.

Kentucky's rivers are a major resource for industrial and economic development. Strong emphasis has been given in our state supported economic development program to efficient utilization of our rivers and riverlands for economic growth. The 1966 Kentucky General Assembly created a Port and River Development Commission to stimulate maximum development of our river related resources. Economical barge transportation is a critical element in this development.

Section 303(b) as now written would appear to seriously impede technological innovation and improvement of transportation on the inland waterways. This would deter growth not only at the state level, but would retard the national economy as well. SB 1314, by removing this out-dated language, would provide a favorable climate for the experimentation and innovation required for more efficient transportation. This is a desirable step forward.

Again I want to emphasize my strong support of SB 1314.

Sincerely,

KATHERINE PEDEN, Commissioner.

HOBART BROS. Co.,
Troy, Ohio, July 5, 1967.

Mr. RAY M. WHITE,
Administrative Assistant to Senator Frank J. Lausche, U.S. Senate, Committee
on Commerce, Washington, D.C.

DEAR MR. WHITE: This is to express my appreciation for your letter of June 6, 1967 acknowledging receipt of my letter of May 29 expressing support for the S. 1314—a bill to revise water carrier exemption restrictions.

I neglected to bring out that I would appreciate it if this letter would become a part of the record, as we are vitally interested in this bill.

I am enclosing a copy of my May 29, 1967 letter as a matter of record and information.

Sincerely,

B. A. LUTZ, Director of Purchases.

MAY 29, 1967.

Re Senate bill S. 1314, section 303(b) of the Interstate Commerce Act.

HON. FRANK LAUSCHE,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: This is to convey our plea that every effort and favorable consideration be given to the above, so that both regulated tonnage and exempt tonnage can move by barge in the same tow.

The passing of this revision, we feel, is a necessity as it will permit the barge lines to accumulate larger tows, making for a more economical operation so that they can maintain, or possibly lower, their present rates.

The United States Government has spent, and rightfully so, many millions of dollars making possible economical water transportation—therefore, we feel that every support should be given to this mode of transportation.

We participate in the manufacturing industry, and building up of our costs includes transportation which is a factor of considerable consequence on our ultimate costs and selling prices, which we all must keep at the lowest possible level, and make a legitimate profit, to maintain not only our domestic but world trade—therefore, every possible avenue must be explored to maintain or reduce our overall costs and selling prices.

It is our hope that you will give your full support to this very important and vital committee assignment.

Sincerely,

B. A. LUTZ, Director of Purchases.

UPPER MISSISSIPPI TOWING CORP.,
Minneapolis, Minn., July 5, 1967.

Senator FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of Upper Mississippi Towing Corporation, an inland water carrier, I am writing to express support for S. 1314 in the form as introduced by Senator Magnuson.

There can be no doubt that Section 303(b) of the I.C.C. Act as interpreted by the Interstate Commerce Commission and the Supreme Court hinders the inland water carrier industry in providing the most efficient and economical transportation service.

Due to our industry's technological advance over the past twenty years inland water carriers can transport ever larger shipments and at lower rates. This is in the best interest of our nation's economy, and yet Section 303(b) of the Act stands in the way of full utilization of this mode of transportation.

Our company respectfully urges your Subcommittee to give prompt and favorable consideration to S. 1314 so as to (1) permit the mixing of regulated and bulk commodities in a single tow, (2) eliminate the June 1, 1939 "Custom of the Trade" clause which acts as an artificial limitation on shipments of bulk commodities, and (3) delete that sentence in Section 303(b) which treats two or more vessels in a single tow as being a single vessel.

It is requested that this letter be made a part of the printed hearing record on S. 1314.

Yours very truly,

W. G. BASKERVILLE, Sr.,
President.

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
New York, N.Y., July 5, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, New Senate Office Building, Washington, D.C.

MY DEAR SENATOR LAUSCHE: The American Merchant Marine Institute, which represents a substantial majority of American-flag shipping of all categories, supports S. 1314. We request that this letter setting forth the Institute's support of the bill in question be made part of the record of the Subcommittee's hearings of June 28 and 29 relating to the legislation in question.

S. 1314, introduced by Senator Magnuson, and the companion bill, H.R. 7610, introduced by Mr. Cabell, would amend the Interstate Commerce Act dry bulk exemption and would repeal the no-mixing rule, the three-commodity limitation, and the custom-of-the-trade date under section 303(b). The Institute favors the passage of this legislation for the reasons set forth by the numerous witnesses who appeared before your Subcommittee in favor of this legislation.

We greatly appreciate your attention to this matter.

Sincerely,

RALPH E. CASEY, President.

AFL-CIO MARITIME COMMITTEE,

Washington, D.C., July 6, 1967.

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

DEAR SENATOR LAUSCHE: The Maritime workers on the inland river barge lines have an obvious personal stake in the success of the companies for which they work.

It is in defense of the livelihood of these men who work on the towboats and barges that we urge you to report favorably on S. 1314.

In the past 10 years labor and management have worked together to increase the efficiency of the inland towboats. Contrary to much irresponsible propaganda against labor, trade unions in general and the Maritime Unions in particular, do not oppose better and more efficient ways of getting a job done. On the inland waterways a towboat of one of the major barge lines in 1967 produces twice as much work as it did 10 years ago. Pay and working conditions have improved substantially over the same period and freight rates have been reduced.

All this improvement is now threatened by an obsolete law adopted in 1940. Unless this law is modified as proposed in S. 1314 the barge lines will be saddled with severe artificial cost increases.

To those who work on the towboats, it has never made any sense that exemptions from regulation should be restricted by the number commodities or by whether regulated and unregulated commodities are physically transported in a single tow. All these technicalities should be swept aside the moment they threaten continued application of the increased efficiency which has been the common achievement of management and labor.

Carriers not subject to the Interstate Commerce Act typically do not deal with unions, their wage rates are far below those of the regulated carriers and their conditions of work can only be described in many instances as reminiscent of sweat shops long since outlawed on the shore. If the Transportation Policy means what it says, it is not in the public interest to reward such behavior by obstructing the ability of the regulated carriers to compete for business.

We have followed the complicated reversals of policy of the I.C.C. on the mixing rule. I will not go into the technical details of this legal problem. It is plain, however, that if a solution is not found, the regulated carriers will be most severely damaged. We urge you, therefore, to find a solution that will permit the certified carriers to continue to mix dry bulk and so-called non-bulk commodities in the same tow.

We respectfully request that the position of our organization submitted herewith be made a part of the hearings on S. 1314 and be entered in the official record.

Sincerely,

HOYT S. HADDOCK,
Executive Secretary.

ALBERT & HARLOW, INC.,
Tulsa, Okla., July 6, 1967.

Re Senate bill 1314.

Hon. FRANK LAUSCHE,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR LAUSCHE: A former colleague of yours, the late Senator Robert S. Kerr of Oklahoma, had a dream of commercial river service once again serving the central plain states, as it had done during the early pioneer days. His dream is fast becoming a reality and the people that will be effected by the advent of commercial river transportation on the Arkansas River are looking forward with great anticipation to the completion of construction work and the inception of barge service.

In 1940, Section 303(b) of the Interstate Commerce Act was enacted when barge transportation on our inland waterways was still an industry in its infancy. The growth of this transportation has reached such magnitude that a portion of Section 303(b) needs updating. The problem is an out-moded sentence defining a flotilla of barges as a single vessel and conditions exemption on the number of different commodities in a tow. At the time Section 303(b) became law, barge flotillas were made up of small numbers of barges and was not a problem when tows were small. However, application of the law today could force modern barge technology back to the same level of the 1940's.

In the past ten years, 6,000 h.p. to 9,000 h.p. towboats have been developed and used extensively throughout the industry. Towboats of this category move up to 30 barges of the 1200 ton capacity per barge efficiently as well as economically. A new ruling will make it difficult for any barge company, singly, to make up flotillas of this size and still remain in compliance of the law. Under the new ruling, an interpretation of a section of the Interstate Commerce Act defining exemption from regulation, barge lines could be required to reduce large flotillas to smaller ones, thus losing the economy and efficiency of large volume flotillas on our inland waterways.

Neither the Interstate Commerce Commission nor do the courts want large rate increases which would become a necessity resulting from the enforcement of this ruling. The solution was indicated by the court itself in stating that if transportation inefficiencies result, the remedy is with Congress.

The introduction of bill (S. 1314) to update Section 303(b) of the Interstate Commerce Act by Senator Warren G. Magnuson (Democrat-Washington), Chairman of the Senate Committee on Commerce and Senator Vance Hartke (Democrat-Indiana), Co-sponsor entitle the bill "A Bill to Modernize Certain Restrictions Upon the Application and Scope of the Exemption." The House of Representatives has introduced a companion bill, H.R. 7610. Both bills will insure continued application of technological developments and improvements.

If you would, contact Mr. William Tucker, Chairman of the Interstate Commerce Commission and indicate an interest in seeing this legislation become law. The adverse effect in the failure to modernize this law will impair early efficient and economical development of barge transportation on the Arkansas River when it becomes navigable in 1970.

We wholeheartedly encourage your full support of this legislation, as it will be necessary in order to permit the mixing of regulated cargoes in the same flotillas with the exempt cargoes that will be moved on the Arkansas River.

Your consideration, interest, and support regarding this request will be sincerely appreciated.

Very truly yours,

E. R. ALBERT, Jr., President.

AMERICAN SUGAR Co.,
New York, N.Y., July 6, 1967.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee, Senate Committee on Commerce, New Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: With reference to my letter of June 19, 1967, in support of S. 1314 I understand that it will not appear as part of the record of the hearings unless a specific request is made that it be included. I would appreciate it if you would consider this as such a request and I enclose an extra copy of my letter.

Sincerely,

GEORGE E. DIETHELM,
Vice President and General Counsel.

JUNE 19, 1967.

Hon. FRANK J. LAUSCHE,

Chairman, Surface Transportation Subcommittee, Senate Committee on Commerce, New Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: We wish to advise you of our support of S. 1314, a bill to amend Section 303(b) of the Interstate Commerce Act.

American Sugar Company has five cane sugar refineries at Boston, Brooklyn, Philadelphia, Baltimore and New Orleans and five beet sugar factories in California and Arizona. We ship a substantial volume of refined sugar by rail-road, motor carrier and water carrier. Our principal water shipments are made by barge from our New Orleans refinery. Regular barge shipments are made, to our Chicago warehouse and liquid sugar station and shipments by barge are also made to customers in St. Louis, Memphis, Louisville, Nashville, Evansville and Tampa. A smaller volume of refined sugar is shipped by inland waterways from our Baltimore refinery, and packaging supplies are shipped by water from our Charleston, S.C., bag plant to our eastern refineries.

The bill would permit the mixing of regulated commodities with exempt bulk commodities in the same tow or barges without forfeiting the bulk exemption, as provided in the recent decision in *Gulf Canal Lines v. United States*, 258 F. Supp. 864 (1966), aff'd per curiam 18 L.Ed. 98 (1967). If the bill is not enacted it will be necessary for the water carriers to fragment the large economical tows which have been used into smaller, less economical tows. This inevitably will result in the necessity for rate increases, which ultimately must be borne by the public. Technological development has been rapid in water transportation and powerful towboats are now available which can handle a large number of barges. Artificial restrictions should not be permitted to hamper the most effective use of these towboats.

The bill would also make clear that sugar transported in bulk by water is exempt from regulation by deleting from Section 303(b) the parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)". The custom of the trade as of June 1, 1939 no longer has any relevance in determining whether the regulation of bulk commodities transported by water is or is not in the public interest. With respect to sugar it is now generally believed that sugar in bulk shipped by water is exempt and the bill would merely confirm existing law. However, enactment of the bill would be useful in completely settling this issue and avoiding any possibility of litigation.

For the above reasons we strongly urge prompt hearings and the enactment of S. 1314.

Sincerely,

GEORGE E. DIETHELM,

Vice President and General Counsel.

ARMCO STEEL CORP.,

Middletown, Ohio, July 6, 1967.

Hon. FRANK J. LAUSCHE,

*U.S. Senate,**Senate Office Building, Washington, D.C.*

DEAR SENATOR LAUSCHE: We would like to express our thanks to you and your Subcommittee for holding early hearings in connection with Senate Bill No. S-1314.

Attached is a copy of our letter to you dated June 9, 1967, outlining Armco's support of the Bill S. 1314. We would appreciate your placing this letter in the record of the Hearing.

Very truly yours,

JOHN N. LIND,

Director of Transportation.

JUNE 9, 1967.

Hon. FRANK J. LAUSCHE,

*U.S. Senate,**Senate Office Building, Washington, D.C.*

DEAR SENATOR LAUSCHE: We are writing with regard to Senate Bill No. S. 1314 which suggests the amendment of section 303(b) of the Interstate Commerce Act. In our opinion approval of the amendment proposed in S. 1314 will have the effect of allowing the inland water carriers to perform their

transportation services in an efficient and economical manner, thereby holding carrier cost of operation at a minimum and affording the shipping public reasonable transportation charges. Additionally, the Bill will remove the old "custom of the trade as of 1939" provision which defined the bulk commodities of the time.

Armco Steel Corporation utilizes the services of the inland water carriers to a large extent. These services are used in transporting raw materials to manufacturing facilities and also in the distribution of our finished steel products to points and places along the inland waterways.

The Interstate Commerce Commission, Federal Courts, and most recently, the Supreme Court, have all interpreted section 303(b) of the Interstate Commerce Act as now written to require non-mixing of bulk exempt and regulated commodities in a single barge tow. If the water carrier industry is compelled to live with this decision, it will mean that no more than three bulk commodities can be put in a barge tow in order to retain exemption from regulation, and further that regulated freight cannot be handled in a tow with bulk exempt freight, but rather must be handled in a separate barge tow.

To require the inland water carriers to operate under section 303(b) as now interpreted by the Courts will nullify the cost saving techniques developed by the barge line industry over the past few years and artificially increase operating costs. The end result would be increased costs for transportation services which would have to be borne by the shipping public.

We respectfully urge the approval of Senate Bill No. S. 1314.

Sincerely yours,

J. N. LIND,

Director of Transportation.

LAKE CARRIERS' ASSOCIATION,
Cleveland, Ohio, July 6, 1967.

Re S. 1314, a bill to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein.

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

DEAR SENATOR LAUSCHE: During the course of the hearings held recently on S. 1314, Mr. Harry J. Breithaupt, Jr., General Attorney for the Association of American Railroads, in his prepared testimony expressed deep-seated dissatisfaction with the water carrier bulk commodity exemption and later, in response to questioning, advocated its repeal. While Lake Carriers' Association is not directly concerned with the provisions of S. 1314, and therefore expresses no views thereon, we would like to bring to your attention the necessity for preserving the water carriers bulk commodity exemption, particularly as concerns the Great Lakes.

As you are no doubt fully aware, the commerce of the Great Lakes (excluding general cargo to and from overseas ports via the Seaway) is predominantly transportation in bulk of such raw materials as iron ore, limestone, coal, grain and petroleum. The ready availability of these commodities through the media of economical Great Lakes vessel transportation must be recognized as perhaps the single most important factor contributing to the industrial might of the Great Lakes region.

In dealing with the transportation of commodities in bulk on the Great Lakes, it has been the traditional policy of the Congress to exempt such transportation from economic regulation. This has been a sound policy redounding to the public interest and should be continued.

The Great Lakes are international waters made expressly so by treaty, and the right of free and open navigation extends to the vessels of all nations. No law of the United States or Canada, nor any international law or agreement, prohibits vessels of any flag from trading within the Great Lakes between the ports of the United States and Canada or between Great Lakes ports and ports overseas.

Construction of the St. Lawrence Seaway has made this right of free navigation of the Great Lakes a valuable privilege to many foreign nations. By the same token, the greatest problem the Great Lakes operator faces today is foreign flag competition. At one time, American flag Great Lakes vessels transported more than 85% of all the iron ore consumed in the United States, plus tremendous quantities of other commodities.

dous quantities of grain, coal, limestone and petroleum. Now the picture has drastically changed. In 1966 the total imports of foreign iron ore reached 46,259,167 gross tons, mostly from Canada and Venezuela via the east coast. This represented the sixth consecutive year of annual increases of iron ore imports. By contrast, only 67,195,197 gross tons of iron ore were shipped from domestic upper lake ports. Formerly iron ore shipments from these ports have been as high as 93,759,981 gross tons in a single navigation season.

Transportation costs play a significant role in the competitive battle between domestic and import ores. Thus, Great Lakes vessel operators, while engaged in domestic trade are, in fact, competing directly with foreign flag vessels in the movement of iron ore and other bulk commodities. To repeal the bulk commodity exemption and place American flag Great Lakes carriers under regulation would further jeopardize their ability to compete with foreign flag vessels without benefiting any other segment of transportation or any industry. In essence, the competitive factors affecting Great Lakes bulk commodity transportation do not call for an adjustment through the extension of regulatory programs and policies to such transportation.

It is true that were Section 303(b) repealed, some bulk transportation on the Great Lakes would still be exempt under Section 303(c), the so-called Great Lakes exemption. It should be pointed out, however, that Section 303(c) is limited to the "contract carrier" and does not extend to common carriers. Under the maritime law Great Lakes vessel operators are generally considered to be contract carriers, but the Interstate Commerce Commission does not seem disposed to follow the maritime law in construing the statutory term "contract carrier by water." Thus, in *Columbia Transportation Company, Contract Carrier Application*, 260 I.C.C. 135, the Commission, in determining whether Columbia was a common or contract carrier, refused to follow the maritime law. In effect, the Commission totaled the shippers whom Columbia served and the commodities which Columbia transported and held, on the basis of its overall operations and irrespective of the special arrangements for each cargo, that Columbia was a common carrier and not a contract carrier for purposes of regulation under Part III. Thus it is extremely important for the Great Lakes that Section 303(b) be retained.

Clearly it is in the public interest to continue the exemption from regulation of bulk commodity transportation on the Great Lakes. The hearings held on S. 1314 would indicate that the bulk commodity exemption is important only to the rivers. Such is not the case. The bulk commodity exemption is extremely important to the Great Lakes and the public dependent upon Great Lakes transportation. We earnestly hope that consideration is not being given to repeal of Section 303(b).

It is requested that this letter be made a part of the record of your subcommittee's hearings on S. 1314.

Sincerely yours,

J. A. HIRSHFIELD,
Vice Admiral, U.S. Coast Guard (Retired), President.

GRAIN & FEED DEALERS NATIONAL ASSOCIATION,
Washington, D.C. July 6, 1967.

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

DEAR MR. CHAIRMAN: The purpose of this letter is to express the views of the Grain and Feed Dealers National Association in strong support of S. 1314 and request that you include this letter in the record of the hearings on that bill.

The Grain and Feed Dealers 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 fifty-four state and regional associations representing 15,000 grain and feed firms.

We followed with great interest the hearings conducted on June 28 and 29, and were happy to note the unanimity of support from the shippers and domestic water carriers. We would like to join those witnesses and add our support to enactment of S. 1314 and urge its early passage.

The grain trade is known for its operating efficiency. Literally millions of tons of grain and oilseeds are transported annually through the agricultural marketing system. The grain trade is characterized by large trading volume and narrow margins. Similarly, for most bulk commodity merchants, transportation costs are second only to the cost of raw materials. Therefore, to preserve their position in such a competitive environment, our members and their customers must be able to take full advantage of technological improvements and other operating efficiencies.

For shippers of bulk agricultural commodities, carriers, and ultimately consumers, water transportation efficiency implies central barge fleetings, quick towboat turnarounds, preservation of large tows from departure to destination, and generally large cargo volume and lower unit cost. However, the cargo mixing restrictions of Sec. 303 (b) of the Interstate Commerce Act unduly limit water transportation efficiency.

Ironically, it is the small shipper who would suffer the most if the limitations contained in Sec. 303(b) were to remain in force. He would be unable to have his barge or barges hooked up to a flotilla having a common destination.

Our industry has been a leader in the development of transportation efficiency. For example, we were the first industry to utilize the railroads' Big John covered hopper cars. We have been important users of tandem trailer trucks. Increased volume of grain has helped make it possible for water carriers to offset increased costs without corresponding rate increases through the use of improved navigation facilities and increased horsepower of towboats and capacity of barges. Our member firms have pioneered in some of the technological developments which have increased the efficiency of water-borne traffic.

However, the statutory limitations that S. 1314 are designed to relieve are obstacles to further operating efficiencies because they force the breakup of large tows.

Our industry has lived with the burden of the mixing rule long enough to realize that we cannot long endure misallocation of such important economic resources without sooner or later suffering parallel economic loss. We respectfully urge the subcommittee to help us avoid this situation by seizing this opportunity for relief and recommending S. 1314 for prompt passage.

Sincerely yours,

JOHN H. FRAZIER, Jr.,
Chairman, Transportation Committee.

MISSISSIPPI VALLEY ASSOCIATION,
New Orleans, La., June 7, 1967.

HON. WARREN G. MAGNUSON,
*U.S. Senate,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: The Mississippi Valley Association is pleased that you have introduced S. 1314 which will modernize Section 303(b) of the Interstate Commerce Act. We trust that your legislation will be enacted.

At the 48th Annual Meeting of the Mississippi Valley Association completed in Chicago, in February of this year, the Association adopted the following resolution without a dissenting vote:

"INTERSTATE COMMERCE ACT—AMENDMENT TO SECTION 303 (b)

"The Association supports proposed deletions in Section 303(b) of the Interstate Commerce Act to remove the parenthetical language applying to the custom of the trade as of June 1, 1939, and striking the sentence reading: 'For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.'

"These changes are required to promote and extend the economies and benefits of technological improvements in the inland water transportation industry."

The restrictions imposed in 1939 are not germane to conditions that exist today, and it is, we believe, the unanimous opinion of the inland waterway carriers that Section 303(b) should be amended to reflect current situations which will provide greater economies in the movement of cargoes by inland waterway transportation.

It is our understanding that hearings on this legislation will be conducted by the Senate Commerce Committee on June 29 and 30, and it is respectfully requested that the position of the Mississippi Valley Association as outlined above be included in the record of hearing.

Thanking you for your consideration of our request, I am with every good wish,

Sincerely yours,

ROBERT L. SHORTLE,
Vice President.

NATIONAL COAL ASSOCIATION,
Washington, D.C., July 7, 1967.

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

DEAR SENATOR LAUSCHE: The National Coal Association supports passage of S. 1314 and concurs in the testimony presented to your subcommittee last week by Dean B. Lewis, general counsel of the Island Creek Coal Company.

Coal is making a comeback as an increasingly important supplier of the nation's energy. Technological innovation in coal mining leading to a steadily declining price of coal is an important part of the reason for this comeback. But greater efficiencies in transporting coal, particularly by rail and water, are important contributors to the comeback. We feel strongly that the passage of S. 1314 will help the coal industry and other industries to take advantage of modern transportation technology.

The cost of transporting coal often equals the cost of the coal itself; hence the encouragement of all possible economies in transportation is a critical factor important in the marketing of coal. The ability of barge lines to mix coal with other bulk commodities and with non-bulk commodities in the accumulation of very large tows and thereby to produce highly economical transportation services is vital to the coal industry and to the expansion of its markets.

Approximately 100 million tons of coal move on the inland waterways annually, and that figure is growing constantly. This volume, low-cost movement has influenced the rates of other modes of transportation and has set the pace for transportation of coal in general. It has contributed more than perhaps any other factor in maintaining coal's place in the energy picture of the country.

We shall appreciate your making this letter a part of the record.

Sincerely,

STEPHEN F. DUNN, President.

[Telegram]

CHICAGO, ILL., July 11, 1967.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.:

Port district strongly urges supporting Senate bill 1214 permitting mixing of barges in river tows for without the benefits of this bill much of the waterborne economy will be bypassed.

M. W. OETTERSHAGEN,
Chairman, Chicago Regional Port District.

RESOLUTION

Whereas, the Memphis and Shelby County Port Commission recognizes the important contributions which have been made and are being made to the economy of this Nation by the barge line industry; and

Whereas, it is essential that transportation on the inland waterways be encouraged by elimination of restrictions which limit its development and economical employment; and

Whereas, Section 303(b) of the Interstate Commerce Act, as presently interpreted, places many restrictions on the full development and growth of the barge line industry; and

Whereas, Senate Bill S. 1314 is designed to correct these inequities;

Now, therefore, be it resolved that the Memphis and Shelby County Port Commission be of record in urging the adoption of Senate Bill S. 1314.

I hereby certify that the foregoing is a true copy and said document was adopted-approved by the Memphis and Shelby County Port Commission in regular special session on the 28th of June, 1967.

R. E. HEFFERMAN,
Secretary-Treasurer.

JULY 10, 1967.

HON. FRANK J. LAUSCHE,
*Chairman, Senate Commerce Subcommittee on Surface Transportation,
U.S. Senate, Washington, D.C.:*

The Commission of Public Docks of the City of Portland, Oregon is the body responsible for the provision and maintenance of Portland's seaport facilities and for the city's maritime commerce. The Commission strongly supports Senate Bill 1314 amending 303B of ICC Act regarding bulk commodities by water and respectfully urges your Committee to act favorably thereon.

THOMAS P. GUERIN,
General Manager, Commission of Public Docks.

THE PROPELLER CLUB OF THE UNITED STATES,
New York, N.Y., July 12, 1967.

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

DEAR MR. CHAIRMAN: The Propeller Club of the United States, a maritime and marine society dedicated to promoting an American Merchant Marine adequate to meet the vital needs of our country and its economic welfare, includes in its definition of the American Merchant Marine all ocean, coastal, inter and intracoastal, Great Lakes and inland waterways ships and vessels.

Having carefully and conscientiously considered the best needs and economic welfare of our country, The Propeller Club has taken a Position with regard to "Repeal of the No-Mixing Rule for Inland Barge Lines" which you will find of interest. This Position represents the consensus of 50 local member Propeller Clubs throughout the United States with a total membership of about 12,000 persons prominent and influential in the maritime, marine, industrial and business community. Copy of the Position is attached.

It is most respectfully requested that the views contained in this Position be given due regard and careful consideration, and that such appropriate action as may be called for be taken.

Sincere regards.

Yours faithfully,

E. D. VICKERY,
National President.

THE PROPELLER CLUB OF THE UNITED STATES, POSITION No. 7—1967, REPEAL OF
THE NO-MIXING RULE FOR INLAND BARGE LINES

Background

Under an archaic and restrictive definition in Section 303(b) of the Interstate Commerce Act, a flotilla of barges is defined as a single vessel. Under a rule against "mixing" regulated and unregulated commodities, no more than three dry bulk commodities may be carried in a single tow without losing their exemption. New technology on the inland rivers now permits tows of 40 to 50 barges pushed by 6,000 to 9,000 horsepower boats, the result of a revolution in power of the past few years. The present "no mixing" rule makes it impossible to accumulate the large tows and hence provide the kind of economical service made possible by technological innovation. The Congress is now considering legislation which would repeal the sentence defining a flotilla of barges as a vessel and allow the continuation of the practice of operating large economical tows. Consideration is also being given to modernizing Section 303(b) by eliminating archaic reference to the practices of the trade in 1939. These measures have the support of the entire inland water carrier industry, of shippers and maritime labor.

Position

The Propeller Club of the United States believes that the repeal of the no-mixing rule for inland barge lines, repeal of the three-commodity limitation and repeal of the "Custom of the trade" date, under Section 303(b) of the Interstate Commerce Act, is in the best interests of consumers, shippers, the inland waterway transportation system and ultimately the economy of the United States; and urges that such action be taken.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 28, 1967.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I'm writing in favor of S. 1314 that nullifies the Supreme Court ruling which prohibits continued assembly of large mixed barge tows.

There is quite a bit of interest in this bill in my district because we do have the Mississippi River and all of the use of barges that that means.

I hope that your committee is able to consider it favorably.

Best wishes.

Sincerely,

DONALD M. FRASER.

SHIPBUILDERS COUNCIL OF AMERICA,
Washington, D.C., June 27, 1967.

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

DEAR MR. CHAIRMAN: Having had a role in the advancement of river transportation, through the construction of barges, the private shipbuilding industry heartily endorses the objective of Senate bill 1314, as introduced by Senators Magnuson and Hartke, and hopes that it will be enacted by the Congress.

It seems to us that the elimination of out-dated and inappropriate language from Section 303(b) in the 1940 Act, as proposed, would be consistent with the expanding needs of the American people and compatible with the technological progress which has taken place over the last decade, not only on the rivers, but with respect to other modes of transportation. Moreover, this statutory clarification might well lead to even more progress requiring the construction of more barges in American yards with consequent employment for American workers.

We sincerely hope that this comment can be made a part of the record of your forthcoming hearings.

Cordially,

EDWIN M. HOOD, *President.*

CAMDEN, ARK., July 12, 1967.

Senator WARREN G. MAGNUSON,
Surface Transportation Subcommittee, Senate Commerce Committee, Senate Office Building, Washington, D.C.:

The Ouachita River Valley Association, the South Arkansas Development Council, and the Port of Camden Propeller Club support Senate 1314 and its companion House measures to amend section 303(b) of the Interstate Commerce Act. The U.S. Senators and Congressmen from Arkansas and Louisiana have been advised of our position.

H. K. THATCHER,
Executive Vice President, Ouachita River Valley Association.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 26, 1967.

HON. FRANK J. LAUSCHE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LAUSCHE: At the conclusion of my testimony on S. 1314 on June 28, 1967, Senator Pearson requested my views on the question raised in the letter of May 4, 1967, to Chairman Magnuson from Mr. Frank H. Weitzel, Assistant Comptroller General of the United States, as to the Commission's interpretation of the bulk commodity exemption for water carriers should S. 1314 be enacted. As relevant to this point, Mr. Weitzel's letter states:

"The proponents of the bill apparently assume the proposed changes in the language of the section would also permit the intermingling of regulated and non-regulated traffic, without loss of the exemption, in that a tow could consist of one or several barges of bulk commodities (no one of which would carry more than three commodities) and also a barge or barges containing non-exempt commodities. We do not feel the language proposed would necessarily be so interpreted by the Interstate Commerce Commission or the Courts and if the bill is to be given favorable consideration by your Committee, we recommend inclusion of clarifying language to that effect in the bill."

Although the Commission's definitive interpretation of this legislation could only be determined by its application to the facts of a particular case, it is our understanding that this bill has precisely the effect assumed by the proponents of S. 1314. In this regard, I would like to call the Subcommittee's attention to the following excerpt from page 5 of my prepared testimony.

* * * [F]urther, by deletion of the third sentence in present section 303(b), this bill would broaden the scope of the exemption in two ways. First, it would overturn the Commission's determination that the mixing of exempt and non-exempt commodities subjects the entire movement to regulation. Second, because this deletion would eliminate the present standard that two or more vessels (i.e. barges) operated as a single unit shall be considered as a "single vessel," the present limits of three bulk commodities in a tow would be eliminated and as many as 60 separate bulk commodities could be carried in a tow of 20 barges.

I hope this information will be of assistance to the Subcommittee in its consideration of this legislation.

Sincerely yours,

PAUL J. TIERNEY, *Vice Chairman.*

DEPARTMENT OF AGRICULTURE,
Washington, D.C., August 8, 1967.

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

DEAR MR. CHAIRMAN: This is in response to your letter of April 6, 1967, inviting comments on S. 1314, a bill "To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein."

The bill would delete a parenthetical expression "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)" from the second sentence of section 303(b) (49 U.S.C. 903(b)). It would also delete the third sentence of section 303(b) which reads, "For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel."

The provisions of this bill are consistent with the recommendation of the Special Study group which reported to your Committee in 1961. (See Committee Print, 87th Congress, 1st Session, National Transportation Policy—Preliminary Draft of a Report Prepared for the Committee on Interstate and Foreign Commerce, United States Senate by the Special Study Group on Transportation Policies in the United States, pp. 530-531, January 3, 1961).

The Department favors enactment of this bill.

The removal of the parenthetical clause from the second sentence is required to recognize the technological advances that have taken place in shipping practices and barge line transportation since this section was enacted in the Transportation Act of 1940.

The elimination of the third sentence from this section would set aside the "no mixing" interpretation of the statute by the Interstate Commerce Commission in *Mississippi Valley Barge Line Company Exemption*, 303(b), 311 I.C.C. 103; Order Enforced and Petition Dismissed sub nom. *Gulf Canal Lines, Inc. v. United States of America and Interstate Commerce Commission*, 258 F. Supp. 864 (S.D. Tex. 1966), *aff'd* 35 U.S.L.W. 3328 (U.S. Mar. 20, 1967). The "no mixing" interpretation holds that the exemption is lost if the tow contains four or more bulk commodities or if the tow contains any nonbulk commodities. The statute presently provides that two or more vessels (barges) while navigated as a unit (in a tow) shall be considered as a single vessel. Thus, the deletion of this sentence will permit the assembly of large tows because the exemption will not be lost if more than three bulk commodities or any nonbulk commodity in separate barges are included in the tow.

Under the existing interpretation of the law the regulated water carrier who desires to participate in bulk traffic must separate bulk traffic from nonbulk traffic in a separate tow (vessel). In some instances, this may have the effect of causing the larger towboats to run at partial capacity, since two tows must be run instead of one to maintain the exempt status of the bulk cargo. As we understand it, some water carriers now operate massive tows between St. Louis and New Orleans which consist of many barges and the unit cost of such operation is quite low. It is quite possible that the efficient use of transportation equipment through the assembly of large tows without regard to commodity mix would lead to reduced transportation costs.

We believe the economy and efficiency likely to result from enactment of this proposed legislation would be beneficial to agricultural producers and shippers.

If enacted, this bill would not involve the Department in any additional cost.

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

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary*.

OFFICE OF THE SECRETARY OF TRANSPORTATION,

Washington, D.C., August 29, 1967.

HON. FRANK J. LAUSCHE,

Chairman, Surface Transportation Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You have recently indicated to Secretary Boyd your desire for further views of the Department of Transportation with regard to S. 1314 which would amend section 303(b) of the Interstate Commerce Act. This bill would amend the Act by eliminating the so-called "custom of the trade" requirement in that section and, more significantly, would permit the regulatory exemption to be applied to each vessel in a multi-vessel tow rather than to the tow itself.

In the Department's previous comments in support of S. 1314, we indicated support for elimination of the trade custom requirement as providing a readily understandable and easily applicable definition. We further stated that "extension of the exemption in the manner proposed to each vessel in the tow would be consistent with sound operating practices and with the realistic economics of modern water carrier transportation. It would remove past artificial barriers to the free flow of commerce. It has become increasingly apparent that the need for rate regulation in this area of transportation serves a public purpose of little or no significance. The Department would, therefore, also support this portion of the proposal."

You have brought to our attention the following comments of Mr. Harry J. Breithaupt, Jr., counsel for the Association of American Railroads:

"The railroads are compelled to resist this effort on the part of the water carriers because of the adverse competitive effect that liberalization of the regulatory exemption afforded water carriers in the transportation of bulk commodities would have upon the railroads. The present exemption discriminates against the railroads. To broaden the scope of that exemption, by removing the existing limitation upon its applicability, would aggravate what is already a blatant discrimination."

The question now posed to us is if section 303(b) is amended, as proposed in S. 1314, what, if any, changes should be considered in the regulatory provisions

applicable to railroads to provide for equality of competitive opportunity in the transportation of bulk commodities.

We would respectfully direct your attention first to our restated comment on the merits of extending the exemption in the manner proposed. It cannot be disputed that new technology has resulted in higher volume tows and lower unit costs. Just as railroad rate-making was vindicated in the so-called "Big John" case in the efforts of the Southern Railroad to secure the benefits of technological improvements, so too do we believe the barge lines should be able to effect similar advances in waterborne transportation. In both instances, the public benefits.

There is no sound reason to continue for the barge lines an administrative procedure which has little public purpose and which is unclear, restrictive, and outdated. It is our position that S. 1314 is justified on its own merits.

We believe that S. 1314 should be looked upon by your Committee as a welcome recognition that realistic economics and technological progress have an obvious and meaningful place in transportation life.

It may well be that there are other areas where amendment of the basic regulatory and promotional statutes affecting other modes of traffic are appropriate. It would be desirable if all such changes could be accomplished at once. All too frequently, however, the best is the enemy of the good with inaction the result. That should not be allowed to happen in this situation where the Committee has before it a piece of legislation which is clearly meritorious in its own right.

We trust that the foregoing will be of assistance to you in your consideration of S. 1314.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., August 30, 1967.

HON. FRANK J. LAUSCHE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LAUSCHE: This responds to your request to Chairman Tucker of August 10, 1967, forwarded to us by Mr. Stanton P. Sender, Transportation Counsel for the Subcommittee, requesting the views of the Commission on the following question:

"[I]f section 303(b) is amended as proposed in S. 1314, what if any, changes should be considered in the regulatory provisions applicable to railroads to provide for equality of competitive opportunity in the transportation of bulk commodities?"

This matter has been considered by the Commission and on its behalf I am authorized to make the following comments.

We have recognized for many years that the existence of the exemption from economic regulation afforded to the water carrier industry by section 303(b) serves to perpetuate the inequality of competitive opportunity for the transportation of bulk commodities between the water carriers and railroads. It has always been the Commission's view that the repeal of the exemption contained in section 303(b) along with repeal of the exemption from economic regulation of the motor carrier transportation of agricultural commodities, provided in section 203(b)(6) of the Act, would bring about greater equality of competitive opportunity and at the time effectuate the goals of the National Transportation Policy.

Although, as indicated in our statement of July 28, 1967, we continue to believe that section 303(b) should be repealed, we also recognize that there is substantial support for its retention. However, it is our judgment, consideration ultimately will have to be given by the Congress to the policy rationale underlying these exemptions. In this regard, it should be noted that this area has not received the attention of the Congress since 1963. Should the Committee determine to review this subject again, the Commission would be happy to provide any information or other assistance that might be useful.

Sincerely yours,

PAUL J. TIERNEY, *Acting Chairman.*

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., August 15, 1967.

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

DEAR CHAIRMAN LAUSCHE: We submit herewith, for the Committee's consideration, the views of this Association with respect to the following legislative measures: S. 751, S. 752 and S. 1314.

* * * * *

MIXING RULE

S. 1314 would have the effect of repealing the so-called "mixing rule" in Section 303(b) of the Interstate Commerce Act. It would thus broaden and enlarge the statutory exemption from regulation afforded domestic water carriers in the transportation of bulk commodities.

Under present law the barge lines may transport bulk commodities free of rate regulation and free of other ICC regulation, provided only that they carry not more than three such commodities in a single tow and that they refrain from mixing bulk and non-bulk commodities in the same tow. The barge lines, in consequence, enjoy a tremendous advantage over the railroads in competition for bulk freight. Most of the barge operators enjoy the additional advantage of escaping the economic cost of safety regulation and licensing and certificating of their personnel.

The competitive disadvantage suffered by the railroads in this regard is of direct, and obvious, concern to railway labor. Bulk commodities constitute the very backbone of railroad traffic. When another form of transport is preferred and given an advantage in the competitive struggle for this business, and the railroads lose the traffic, the impact upon jobs and wages is direct and adverse.

S. 1314 would liberalize the water carriers' exemption. It would enable them to transport bulk commodities free of regulation no matter how many such commodities are included in a tow and without regard to the mixture of bulk and non-bulk commodities in the same tow of barges.

This would worsen what is already an unjustifiable discrimination against the railroads and their employees. Railway Labor opposes S. 1314.

We respectfully request that your committee consider our views on these measures and we ask that this letter be made a part of the hearing record.

Sincerely yours,

DONALD S. BEATTIE, *Executive Secretary.*

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