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WATER CARRIER MIXING RULE

GOVERNMENT

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON
TRANSPORTATION AND AERONAUTICS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 8298, H.R. 8376, and H.R. 8509

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

MAY 20, 21, AND 22, 1969

Serial No. 91-16

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(II)

CONTENTS

Hearings held on—	Page
May 20, 1969-----	1
May 21, 1969-----	91
May 22, 1969-----	123
Text of—	
H.R. 8298 and H.R. 8376-----	2
H.R. 8509-----	2
Report of—	
Bureau of the Budget on H.R. 8298 and H.R. 8376-----	2
Justice Department on H.R. 8376-----	3
Transportation Department on H.R. 8298 and H.R. 8376-----	4
Statement of—	
Abernethy, Hon. Thomas G., a Representative in Congress from the State of Mississippi-----	28
Adlum, Merle, union official, Seattle, Wash., Seafarers International Union of North America, AFL-CIO-----	132
Beardsley, Peter T., general counsel, American Trucking Association-----	150, 157
Breithaupt, Harry J., Jr., general solicitor, Association of American Railroads-----	96
Brooks, Hon. Jack B., a Representative in Congress from the State of Texas-----	26
Brown, Hon. Virginia Mae, Chairman, Interstate Commerce Commission-----	35
Burke, Wallace R., Commissioner, Interstate Commerce Commission-----	35
Dorr, L. J., executive vice president, National Industrial Traffic League-----	85
Drozak, Paul, union official, Houston, Tex., Seafarers International Union of North America, AFL-CIO-----	132, 133
Eckhardt, Hon. Robert C., a Representative in Congress from the State of Texas-----	4, 59
Fulton, Hon. James G., a Representative in Congress from the State of Pennsylvania-----	28
Hamilton, Hon. Lee H., a Representative in Congress from the State of Indiana-----	56
Hardin, Dale W., Commissioner, Interstate Commerce Commission-----	35
Harriss, C. J., vice president, transportation, Continental Grain Co-----	127
Hershey, J. W., chairman, American Commercial Lines, Houston, Tex., and Jeffersonville, Ind., in behalf of Water Transport Association-----	60, 65
Jensen, Jens C., general traffic manager, Great Western Sugar Co-----	140
Joubert, Dr. W. H., general traffic manager, Bowaters U.S. Corp-----	168
Kahn, Fritz R., Deputy General Counsel, Interstate Commerce Commission-----	35
Mechling, F. A., executive vice president, A. L. Mechling Barge Lines, and also in behalf of American Waterway Operators, Inc-----	60, 70
Mollohan, Hon. Robert H., a Representative in Congress from the State of West Virginia-----	31
Moorhead, Hon. William S., a Representative in Congress from the State of Pennsylvania-----	91
Pinkney, James F., chief counsel, public affairs, American Trucking Association-----	150
Prawde, Noah, Chief, Water Carriers Section, Bureau of Operations, Interstate Commerce Commission-----	35
Ross, Ernest C., National Plant Food Institute-----	123

Statement of—Continued

Ruppenthal, Dr. Karl, director of transportation management, Stanford University.....	Page 60, 70
Schwartz, Louis A., general manager, New Orleans Traffic and Transportation Bureau.....	80
Shepard, Earl, vice president, Seafarers International Union of North America, AFL-CIO.....	132
Spencer, Gordon, union official, Norfolk, Va., Seafarers International Union of North America, AFL-CIO.....	132, 134
Springrose, James V., vice president, Cargill, Inc.....	131
Stockton, William G., chairman, Inland Waterways Committee, National Industrial Traffic League.....	85
Struble, L. P., Jr., executive vice president, Dravo Corp.....	60, 61
Triggs, Matt L., assistant legislative director, American Farm Bureau Federation.....	129
Vescelius, Clinton H., Manufacturing Chemists Association.....	137
Additional material submitted for the record by—	
AFL-CIO Maritime Committee, Hoyt S. Haddock, executive director, letter to Chairman Friedel with statement attached.....	93
Allegheny Ludlum Steel Corp., Brackenridge Works, B. B. Caruso, director of traffic and transportation, letter to Chairman Friedel.....	177
American Institute of Merchant Shipping, James J. Reynolds, president, letter to Chairman Friedel.....	181
American Trucking Association, Inc., letter dated May 26, 1969, to Congressman J. J. Pickle, re analysis of and position and recommendation on, the language the Interstate Commerce Commission recommended as a substitute for the bills under consideration.....	164
Archer Daniels Midland Co., John E. Harvey, director of transportation, telegram to Chairman Friedel.....	92
Association of American Railroads, letter dated June 6, 1969, to Chairman Friedel, re substitute proposal advance on May 20, 1969, by the Chairman of the Interstate Commerce Commission.....	102
Boggs, Hon. Hale, a Representative in Congress from the State of Louisiana, statement.....	32
Bunge Corp., C. E. Brasmer, letter to Chairman Friedel.....	181
Chicago Regional Port District, Maxim M. Cohen, general manager, letter to Chairman Friedel.....	95
Chotin Transportation, Inc., N. L. Caruthers, vice president, statement.....	120
Clark, Hon. Frank M., a Representative in Congress from the State of Pennsylvania, statement.....	33
Consolidated Blenders, Inc., Winston Rashleigh, office manager, letter to Chairman Friedel.....	177
Corbett, Hon. Robert J., a Representative in Congress from the State of Pennsylvania, statement.....	34
Diamond Crystal Salt Co., H. G. Miller, general manager, distribution, letter to Chairman Staggers.....	182
Eckhardt, Hon. Robert C., a Representative in Congress from the State of Texas, booklet entitled "Technological Developments on Inland Waterways".....	8
Electro-Coal Transfer Corp., Paul C. Zempel, vice president and secretary, letter to Chairman Friedel.....	183
Engelhard Hanovia, Inc., Thomas W. Cushing, vice president, letter to Chairman Friedel.....	93
Georgia Ports Authority, J. D. Holt, executive director, letter to Chairman Friedel.....	178
Grain & Feed Dealers National Association, John H. Frazier, Jr., chairman, transportation committee, letter to Chairman Friedel.....	178
Gulfcoast Transit Co., William H. Vaught, vice president, letter to chairman Friedel.....	184
Houston Port Bureau, Inc., W. E. Fincher, general manager, letter to Chairman Friedel.....	58
Institute of Scrap Iron & Steel, Inc., William S. Story, executive vice president, statement.....	172
Interstate and Foreign Commerce Committee, correspondence between Congressman Dingell and Hon. Virginia Mae Brown, chairman, Interstate Commerce Commission, re mixing of regulated and nonregulated transportation in one tow.....	89

Additional material submitted for the record by—Continued

Interstate Commerce Commission, amendment in the nature of a substitute to H.R. 8298, H. R. 8376, and H.R. 8509.....	Page 38
Kluczynski, Hon. John C., a Representative in Congress from the State of Illinois, statement.....	33
Matsunaga, Hon. Spark M., a Representative in Congress from the State of Hawaii, letter to Chairman Friedel.....	176
Mid-South Towing Co., Nobel L. Gordon, president, letter to Chairman Friedel.....	182
Mississippi Valley Association, W. Michael Cassady, executive vice president, statements.....	146
Monsanto Co., M. E. Iten, manager, water transportation, letter to Chairman Friedel.....	179
Morton Salt Co., C. F., Forgue, general traffic manager, letter to Chairman Friedel.....	184
National Council of Farmer Cooperatives, statement.....	174
National Grange, John Scott, master, letter to Chairman Friedel.....	185
National Tank Truck Carriers, Inc., C. Austin Sutherland, managing director, statement.....	154
Nebraska Consolidated Mills, Co., E. J. Weigel, vice president, traffic, letter to Chairman Friedel.....	177
Ohio Valley Improvement Association, Inc., Alex S. Chamberlain, president, statement.....	175
Oil Transport Co., Inc., W. C. Neal, vice president, telegram to Chairman Friedel.....	186
Omaha Chamber of Commerce, J. D. Anderson, president, letter to Chairman Friedel.....	95
Omaha Dock Board, John G. Hahn, president, telegram to Chariman Friedel.....	93
Power Transportation Co., Thomas A. Kirkpatrick, vice president, letter to Chairman Friedel.....	183
Propeller Club of the United States, Thos. E. Stakem, president, letter to Chairman Friedel.....	180
St. Louis Terminal Corp., Charles J. Lamothe, chairman of the board, telegram to Chairman Friedel.....	92
Shipbuilders Council of America, Edwin M. Hood, president, letter to Chairman Friedel.....	57
Sullivan, Hon. Leonor K., a Representative in Congress from the State of Missouri, statement.....	34
Upper Mississippi Towing Corp., W. G. Baskerville, Sr., president, letter to Chairman Friedel.....	183
Valmont Industries, Inc., Robert B. Daugherty, president, letter to Chairman Friedel.....	181
Waterways Association of Pittsburgh, Alan Gumbert, president, statement.....	176

ORGANIZATIONS REPRESENTED AT HEARING

American Commercial Lines, Houston, Tex., and Jeffersonville, Ind., J. W. Hershey, chairman.

American Farm Bureau Federation, Matt L. Triggs, assistant legislative director.

American Trucking Counsel:
 Beardsley, Peter T., general counsel.
 Pinkney, James F., chief counsel, public affairs.

American Waterway Operators, Inc., F. A. Mechling.

Association of American Railroads, Harry J. Breithaupt, Jr., general manager.

Bowaters U.S. Corp., Dr. H. W. Joubert, general traffic manager.

Cargill, Inc., James V. Springrose, vice president.

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

Dravo Corp., L. P. Struble, Jr., executive vice president.

Great Western Sugar Co., Jens C. Jensen, general traffic manager.

Interstate Commerce Commission:
 Brown, Hon. Virginia Mae, chairman.
 Burke, Wallace R., commissioner.
 Hardin, Dale W., commissioner.
 Kahn, Fritz R., deputy general counsel.
 Prawde, Noah, Chief, Water Carriers Section, Bureau of Operations.

Manufacturing Chemists Association, Clinton H. Vescelius.

Mechling, A. L., Barge Lines, F. A. Mechling, executive vice president.

ORGANIZATIONS REPRESENTED AT HEARING—Continued

National Industrial Traffic League:

Dorr, L. J., executive vice president.

Stockton, William G., chairman, Inland Waterways Committee.

National Plant Food Institute, Ernest C. Ross.

New Orleans Traffic and Transportation Bureau, Louis A. Schwartz, general manager.

Seafarers International Union of North America, AFL-CIO:

Adlum, Merle, union official, Seattle, Wash.

Drozak, Paul, union official, Houston, Tex.

Shepard, Earl, vice president.

Spencer, Gordon, union official, Norfolk, Va.

Water Transport Association, J. W. Hershey.

WATER CARRIER MIXING RULE

TUESDAY, MAY 20, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The subcommittee will come to order.

This morning the Subcommittee on Transportation and Aeronautics is meeting to consider three identical bills; namely, H.R. 8298, by Mr. Kuykendall; H.R. 8376, by Mr. Eckhardt, Mr. Blanton, and Mr. Kyros; and H.R. 8509, introduced by Congressman Boggs.

These bills would amend section 303(b) of the Interstate Commerce Act in two particulars.

One, the bills would eliminate the so-called mixing rule setting out the definition that two or more vessels, while navigated as a unit, shall be considered a single vessel, and two, they eliminate the cutoff date of June 1, 1939, for determining what commodities were transported in bulk in accordance with the existing custom of the trade.

Basically, the bills seek to overturn the series of rulings of the Interstate Commerce Commission over a period of 25 years, which have held that the mixing, in a single tow, of bulk commodities with regulated nonbulk commodities exempt from regulation causes the exemption from regulation to be lost, culminating in its position being sustained by a circuit decision that was upheld 2 years ago by the Supreme Court.

These decisions have struck down various attempts by the carriers to utilize the incidental towing authority of section 303(f) (2) to avoid the direct restrictions of section 303(b) applying to the transportation of commodities in bulk.

The subject is not a new one to the committee, having been before us in bills since the 86th Congress. In the 87th Congress this committee held extensive hearings in the spring of 1962 on several bills attempting to meet the problem of the mixing rule, either by repeal of the rule or by repeal of the exemption.

Again, 2 years ago, in 1967, we had extensive hearings before this subcommittee.

At that time it appeared that witnesses on the measure were divided, the water carriers desiring a repeal of the mixing rule, and other

carriers, particularly the railroads, stating that if the water carriers were to be free from regulation on bulk commodities, the rail carriers should be given the same treatment.

It appeared that there was not time remaining in Congress to work out any legislation regarding the subject of deregulation or equalization of rates, and, accordingly, the respective Commerce Committees of the House and Senate requested the Commission further to stay its order of August 1960, which the Supreme Court had upheld until adequate consideration might be given. The Commission twice has extended the stay, the current extension expiring at the end of next month.

A copy of the bills and of the agency reports thereon will be included in the record at this point.

(Text of H.R. 8298, H.R. 8376, and H.R. 8509, and reports thereon, follow:)

[H.R. 8298, 91st Cong., first sess., introduced by Mr. Kuykendall on March 5, 1969, and H.R. 8376, 91st Cong., first sess., introduced by Mr. Eckhardt (for himself, Mr. Blanton, and Mr. Kyros) on March 6, 1969, are identical as follows:]

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.

[H.R. 8509, 91st Cong., first sess., introduced by Mr. Boggs on March 10, 1969]

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 (49 U.S.C. 903(b)) is amended—

(1) by striking out "(in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939)" in the second sentence thereof; and

(2) by striking out the third sentence.

EXECUTIVE OFFICE OF THE PRESIDENT,

BUREAU OF THE BUDGET,
Washington, D.C., June 4, 1969.

HON. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your requests for the views of the Bureau of the Budget on two identical bills, H.R. 8298 and H.R. 8376, "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 Bureau of the Budget would have no objection to the enactment of H.R. 8298 or H.R. 8376.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 11, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 8376 (91st Cong., 1st 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.

Part III of the Interstate Commerce Act (49 U.S.C. 901) provides for the regulation of common carriers by water in regard to rates, fares, charges, schedules, through routes and certain other matters. Transportation of commodities in bulk are exempt from such regulation by section 303(b) which now provides: "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. * * *"

Supreme Court decisions affirm an interpretation of section 303(b) by the Interstate Commerce Commission that the dry bulk commodities exemption is inapplicable where dry bulk and non-bulk commodities are transported in the same vessel (*Gulf-Canal Lines, Inc. v. United States*, 386 U.S. 348 (1967); *Commercial Barge Lines v. United States*, 359 U.S. 342 (1959)).

Amendments to section 303(b) proposed by H.R. 8376 would have the following effects: (1) repeal of the condition that dry bulk commodities are not exempt when carried with non-bulk commodities in a single tow; (2) repeal of the condition that no more than three dry bulk commodities may be carried simultaneously in a single tow and still be exempted; and (3) repeal of the "custom of the trade" provision which limits the exemption of dry bulk commodities.

The present statute's "non-mixing" rule, requiring the carriage in separate tows of dry bulk and non-bulk commodities, impairs the efficiency of water carriers. It limits utilization of improved and higher capacity barges, towboats and tugboats developed since the present law was passed. The rule hampers carriers' abilities to give adequate and flexible service to shippers and tends to increase transportation costs.

The repeal of the 1939 "custom of the trade" provision will permit unregulated bulk transportation of commodities such as plastic pellets, urea pellets, soybean pellets, corn gluten feed pellets, citrous fruit pellets, alfalfa pellets, rutile ore, vermiculite and ammonium phosphate which have been introduced to inland waterway transportation since that date.

The Department of Justice recommends enactment of H.R. 8376 which would bring about freer, more efficient and more competitive transportation on the inland waterways.

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

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 10, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in reply to your requests for the views of this Department with respect to H.R. 8298 and H.R. 8376, identical bills "To amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein."

These bills are identical to H.R. 7610, which was introduced during the first session of the ninetieth Congress. The amendments proposed in the bills would strike the parenthetical clause contained in section 303(b) of the ICC Act, thereby freeing the definition of what constitutes a bulk commodity from the trade custom criterion which prohibits the exemption from regulation of commodities moved by water unless they were moved in bulk prior to June 1, 1939. Secondly, the bills would eliminate the requirement that two or more vessels while navigated as a unit be considered a single vessel, thereby permitting the application of the regulatory exemption to each vessel in a multivessel tow rather than to the tow itself.

This Department expressed its favor and support of H.R. 7610 during the last Congress because the amendments proposed by the bill would accord a readily understandable and easily applicable definition to bulk traffic, would remove past artificial barriers to the free flow of commerce, and would be consistent with sound operating practices and the realistic economics of modern water transportation.

For these reasons the Department recommends enactment of H.R. 8298 and H.R. 8376.

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,

PAUL W. CHERINGTON,
Assistant Secretary for Policy and International Affairs.

Mr. FRIEDEL. Our first witness this morning would be our colleague, Congressman Eckhardt.

Congressman Eckhardt is the sponsor of one of the bills.

STATEMENT OF HON. ROBERT C. ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. Mr. Chairman, on behalf of Mr. Blanton, Mr. Kyros, and myself, I introduced H.R. 8376; and I appreciate the opportunity to present my views.

First, I would like briefly to explain the status of existing law and then point out how this bill changes existing law, but does not change existing patterns in the transportation field.

Under existing law, if one barge tow carries no more than three bulk commodities, it is exempt from tariff regulation. It had generally been considered that the literal language of the first sentence of sec-

tion 303(b) was determinative. That language says that 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, then such barge is not subject to ICC regulation.

This concept was what governed shipping until at least 1955. It began to be put in question in the late fifties by orders of the ICC and by the court case, *Commercial Barge Lines v. United States* (166 Fed. sec. 857), affirmed per curiam (359 U.S. 342).

Then came Mississippi Valley Barge Co. (311 ICC 105), removing the exemption even from the first leg of a trip conducted by an exempt carrier if a later leg included mixing in the tow of a regulated common carrier with nonexempt barges.

This order was sustained in *Gulf Canal Lines v. United States* (258 Fed. 2d, 864) in 1966 and affirmed per curiam by the Supreme Court on March 20, 1967.

The question that the case addressed was this: Several barges carry bulk cargo. They are exempt from ICC regulations because there are no more than three bulk commodities in the barges. If the carrier is engaged in exempt transportation of this sort he is not required to possess certificates of convenience and necessity for the routes on which he operates, publish and adhere to tariffs set by the ICC nor fill reports and comply with other regulatory requirements.

Unless specifically exempt, common carriers on inland waterways are subject to these regulations.

Suppose such a carrier like Gulf Canal Lines commences to move bulk cargo of grain destined to, say, Cincinnati. Gulf moves a tow of barges loaded with the bulk cargo to the mouth of the Mississippi where these barges are taken over under a contract of towage with the regulated common carrier.

The common carrier has an assortment of cargos and barges which contain some bulk cargo and some packaged cargo, a general mixture of what is available to be towed up the river at that time.

As many as, say, 39 barges may be assembled to constitute a single tow. Under *Gulf Canal Lines v. United States*, the barges of Gulf Canal Lines loaded with grain lost their bulk exemption and such exemption was lost along the entire trip for all carriers.

Of course, I have stated the facts of the case very generally and I should like to ask leave to insert it in full in the record at the end of my testimony.

Mr. FRIEDEL. Without objection, it will be so ordered.

Mr. ECKHARDT. What this bill does is simply eliminate two qualifying phrases in section 303(b). The first is not very important to the problem raised in the *Gulf Canal* case. It will not be discussed. It is technical and has been recommended by governmental agencies concerned with it. It will be further explained by other witnesses.

But the important change that this bill makes is the omission of the third sentence of section 303 (b), which reads:

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

Under present interpretation of this language, a company like Gulf Canal Lines cannot ship bulk cargo from Houston to Cincinnati in a large barge tow with nonbulk cargo without having its bulk barges regulated all the way.

The large and powerful towboats that ply the Mississippi accumulate tow loads of, say, 39 or more barges in a single tow. If the present ICC regulation is put into effect, this means that these barge tows must be broken up into groupings in accordance with what they carry.

For instance, the grain being transported by Gulf Canal Lines might go up in one tow of 13 barges. Suppose there are 13 more barges containing three commodities each, such as coal, salt, and sulfur? These would have to be made into a separate tow. Thirteen more non-bulk barges would have to travel in a third tow.

Thus, what could have moved in a 39-barge tow would be broken into three tows of about 13 each. This would be necessary to realize certain advantages in existing law and practice, but would make the operation much less efficient and thus more costly to the shippers involved.

I hasten to say that the bill proposed here will not change existing practices because the ICC, recognizing the need for additional time to permit barge companies to comply with its order and recognizing the pendency of legislation, first stayed the effective date for compliance with its order until January 1, 1968.

And they have extended such stay from time to time. But unless action is taken through this legislation as a result of the interpretation of existing law, water carriers will be obliged to break up large tows to avoid mixing.

And I quote here:

This will cancel the efficiencies of the present large tows—

As the Senate Committee on Commerce said in its report in a like bill in 1967, and—

* * * cause an increase in the water transportation costs to the detriment of the public.

This bill would allow continued technological progress in innovation in the towboat industry. A study of rates of five carriers shows that average per ton revenue in 1960 was \$2.56 and in 1966 it was \$2.31, a 10-percent reduction. Average revenue 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 or a reduction of 17 percent.

More volume of the tow barges allows lower unit cost and this rebounds to the advantage of the shipper and ultimately to the consumer. Barge operations, though still much smaller than railroad operations in total tonnage, are nevertheless the substantial segment of American transportation.

From 1948 to 1964, the ton-miles of barge cargo moved per year quadrupled from \$34.5 billion to \$144.2 billion. A more complete description of the advances of the barge industry is made in the booklet, "The Technological Developments on Inland Waterways," and I ask unanimous consent that this be added in the record at the end of my statement, also.

Mr. FRIEDEL. Without objection, it will be included in the record.

Mr. ECKHARDT. The growth and volume of both the industry and of the barge tows has enabled barge lines to offset increased costs of labor, fuel, and materials and at the same time achieve substantial reductions in freight rates.

It would be a pity if governmental sensitivity to this emergent economic problem should not arrest this problem or reverse the trend.

I must admit that I am not without a regional interest in this bill. The Houston ship channel is connected directly with the vast inland waterway system which extends from Brownsville on the Mexican border along the Gulf of Mexico around Florida and up the Atlantic coast with its great inland river connections serving the Midwest and the eastern part of the Nation.

Without counting local barge movement, over 12,000 barges carrying between 12 and 15 million tons of cargo call at the Port of Houston each year. Many kinds of manufactured products as well as raw products are dependent upon this low-cost transportation system for their movements as are the many large industries which have located where they have direct access to this type of service.

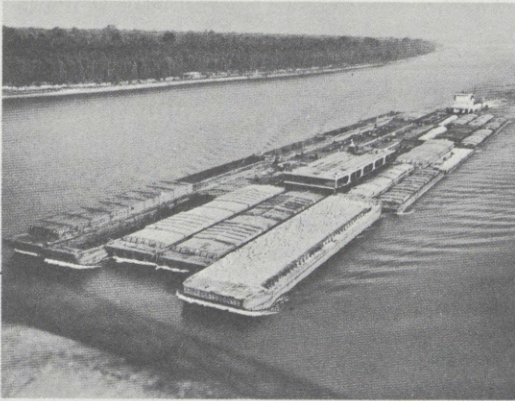
The Texas gulf coast represents the largest single region utilizing the reaches of the lower Ohio River for the movement of chemicals both upbound and downbound.

In 1956, 263,000 tons of Ohio Valley chemicals moved downbound to supply the industries of Texas. But a much greater movement, over 1 million tons, originated in Texas and moved to Ohio Valley markets.

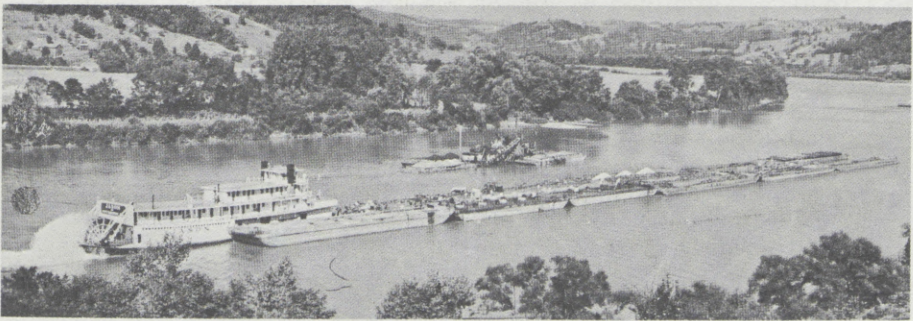
In 1965, 4.2 million barrels of gasoline and 1.3 million barrels of fuel oil originated on the Texas gulf coast and was consigned to Ohio Valley markets. These two products together represented revenues and incomes to the Texas petroleum industry exceeding \$23 million, but they are only a part of the total movement by barge.

The bill which we have introduced here, I think, indicates a necessity for the continued efficient operation of barge transportation, a dire need for many industries in agricultural interests and is a good thing for the public at large.

(The booklet referred to follows:)



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.

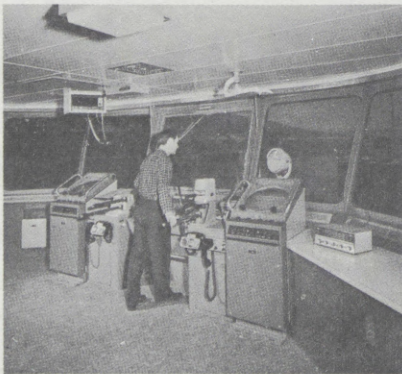
When moving upstream, the major problem is to obtain sufficient velocity through the water not only to

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

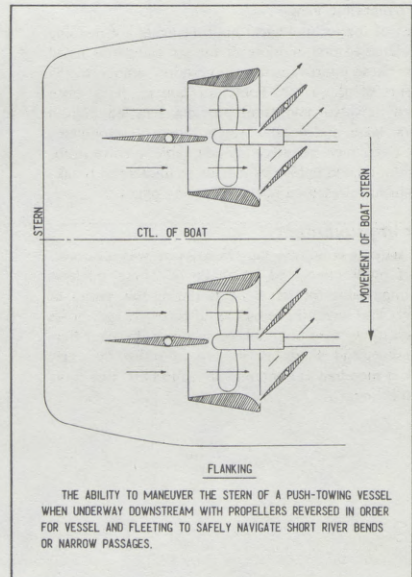
The river current increases the speed of tows headed downstream and therefore contributes to the speed of delivery. This addition to the powered velocity of the fleet, however, also increases the problems of slowing and sometimes stopping the fleet with respect to the river bank in order to negotiate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



Pilot house visibility.

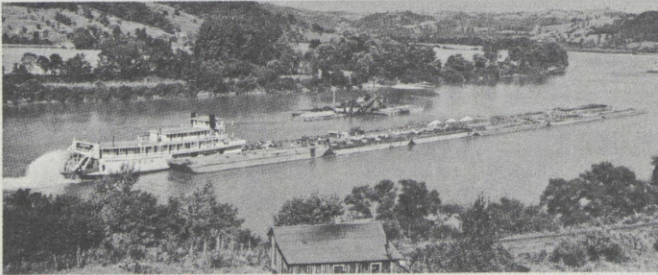


The greatest obstacle to navigation on the Ohio, however, was the Falls of the Ohio at Louisville, Kentucky. As a result of great agitation, a canal around the Falls was begun in 1825 and completed in 1830. Other improvements to the river such as the building of dikes and the removal of obstructions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

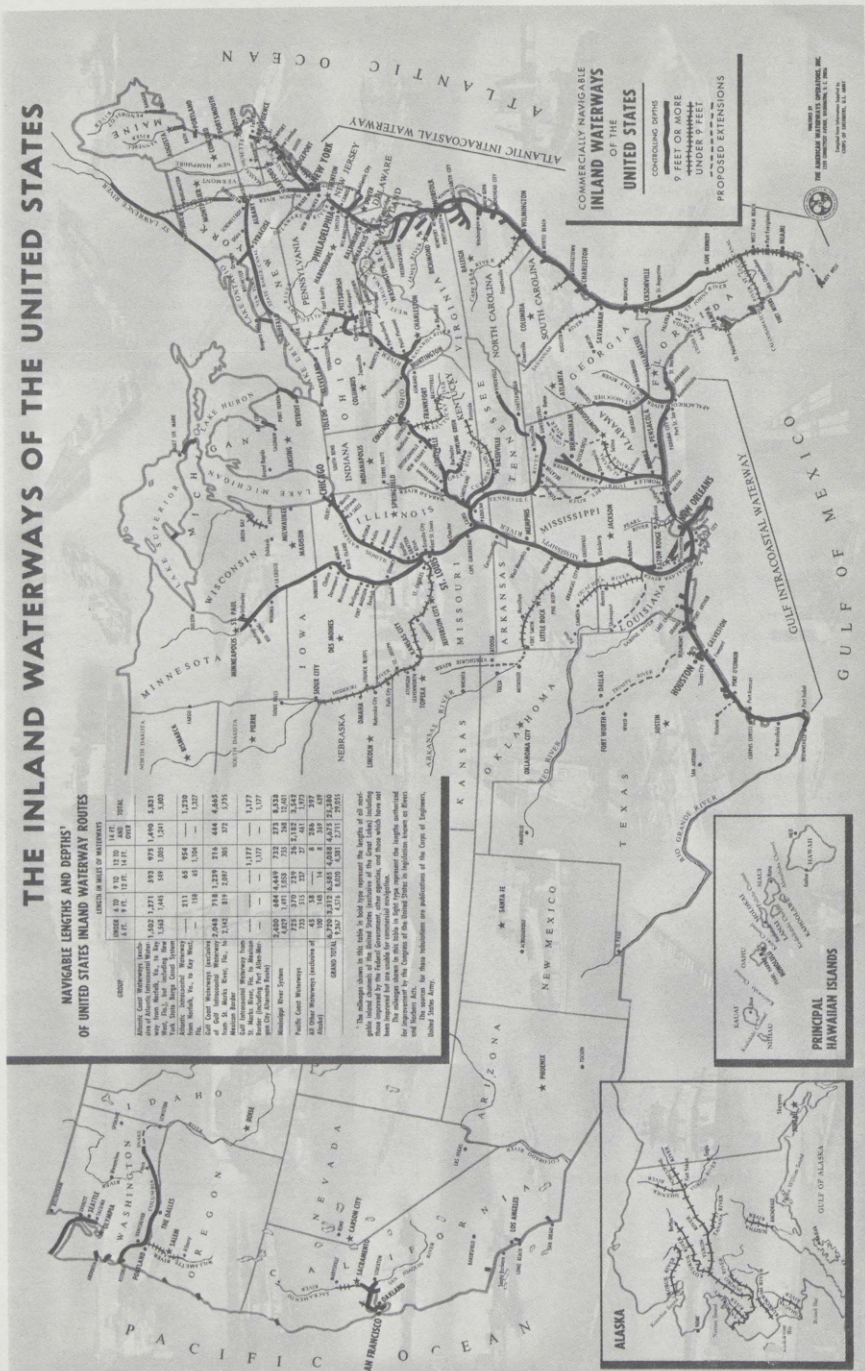


THE INLAND WATERWAYS OF THE UNITED STATES

NAVIGABLE LENGTHS AND DEPTHS¹
OF UNITED STATES INLAND WATERWAY ROUTES

1. *Explain the importance of the following factors in the development of a country's economy:*

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975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GRAND TOTAL	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427	1,427																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									



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

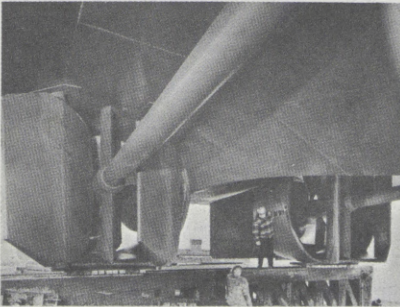
paddlewheel providing some steering control and some braking capacity. High thrust upriver was not particularly necessary, since up-bound tows consisted only of empty barges. Then, too, the sternwheel could "walk" itself across shallow places where a propeller driven vessel could go aground.

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.

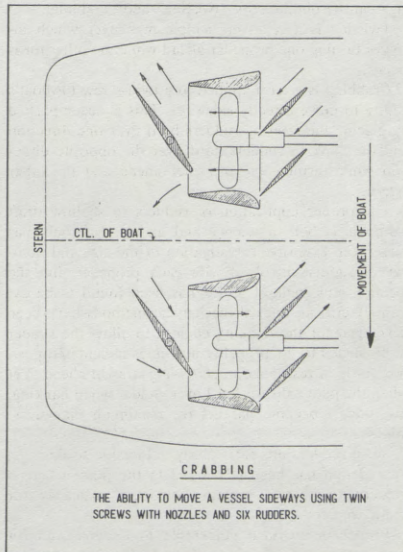
Propeller efficiency increases with increasing propeller diameter. To take advantage of this relationship, tunnel sterns were developed allowing larger propellers which could absorb higher horsepower while still navigating in existing depths of water. This also permitted the design of larger rudders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

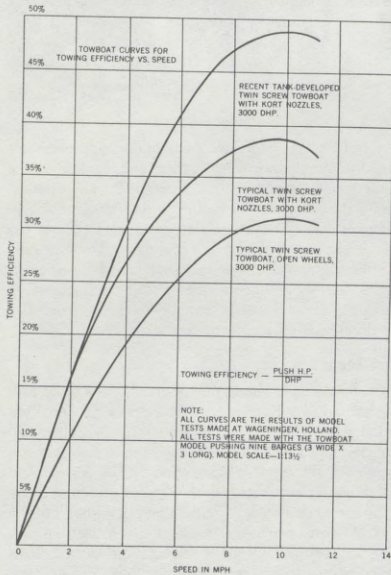
In 1937 a diesel towboat, the "Pioneer," was fitted with a device called a Kort nozzle. The device, essentially a steel ring of air foil section encircling the propeller, had been developed in Europe and was reputed to increase propulsive efficiencies substantially. The experiment was extremely successful. 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.



COMPARATIVE PROPULSION SYSTEM EFFICIENCIES

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

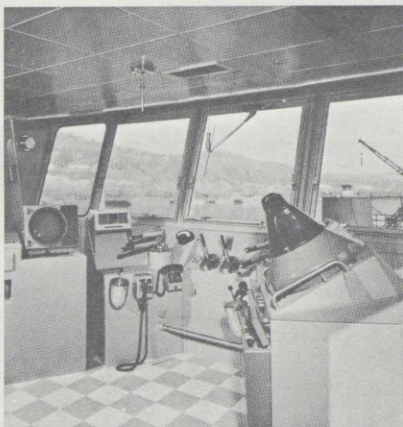
Prior to 1946, the movement of traffic on the rivers was almost entirely dependent on visual contact and audible signals for navigation, for the avoidance of collisions and for the arrangement of passing procedures. When fog closed in, the tows simply had to tie up to the bank and wait for the fog to 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 horsepowers. 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.

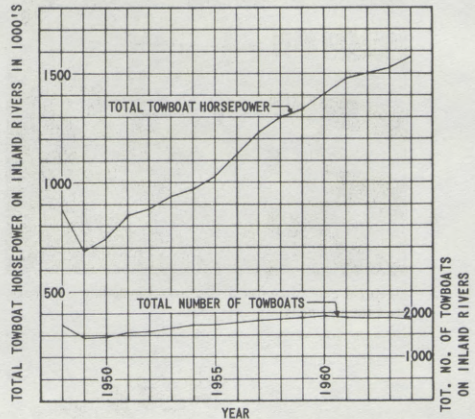
Smaller boats, too, have benefited from the development of the high speed diesel. Boats developing 500 hp in 1955 now are being equipped with engines developing over 1000 hp and weighing very little more. In many cases, the actual physical dimensions of the engines and gears are less. These smaller, 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

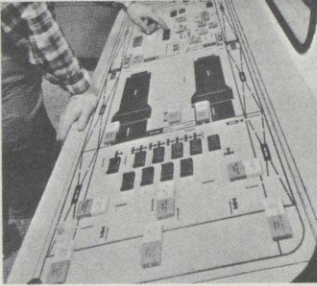
In the days when steam boats were handling most of the tonnage on the rivers, crews of twenty and twenty-five men on a towboat were common. Three to four men were required on each watch in the engine room alone.

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.

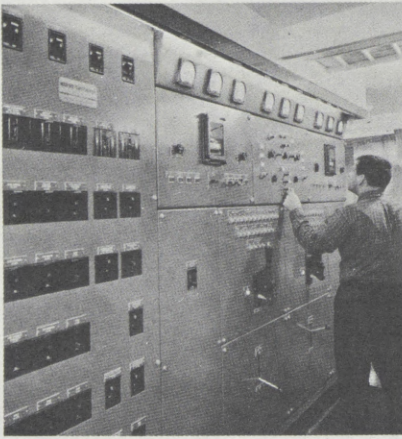


TOTAL TOWBOAT HORSEPOWER AND NUMBER OF TOWBOATS PER YEAR

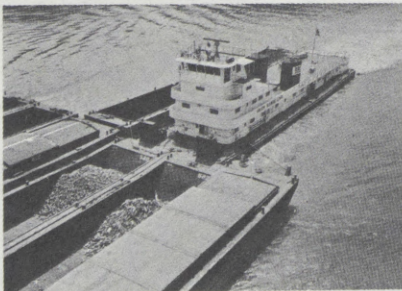
(Compiled by American Waterways Operators, Inc. from U. S. Army Corps of Engineers' data.)



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.

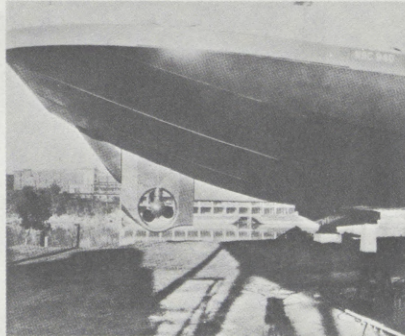
1. The sensitivity of the gyro results in very little angle of rudder to hold course which reduces loss of speed due to rudder drag.
2. The pilot needs only to set or adjust his course every so often as the river direction changes and does not have to manually compensate for every tendency to go off 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.

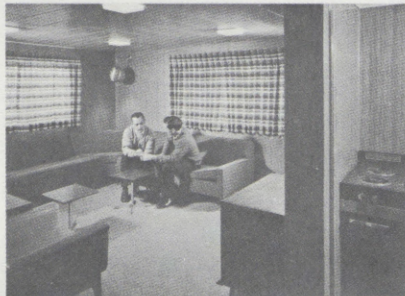
These and many more living comforts promote efficiency on the job.



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.

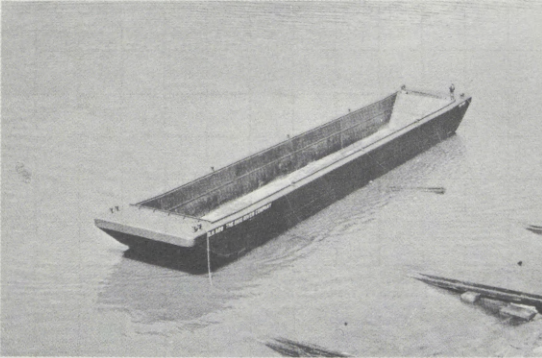
The growth in the size of barges has been matched by an increase in the number of barges being towed in a single fleet. In the 1940's, a fleet of fifteen 175' x 26' x 10'-8" barges was a large fleet even on the lower Mississippi River. Larger fleets were pushed on occasion, but not as a regular thing 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.

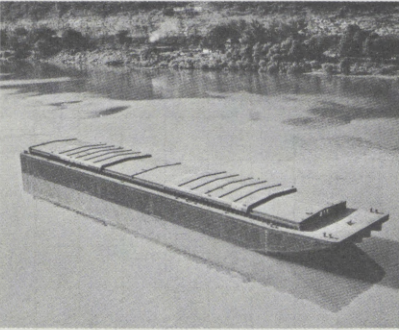
A more significant measure of the output of this inland transportation system is the number of ton-miles moved in a year. The unit is simply what the title implies in that it is the movement of one ton of cargo one mile. In the same 16 year period noted above, the ton-miles of cargo moved per year increased 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.



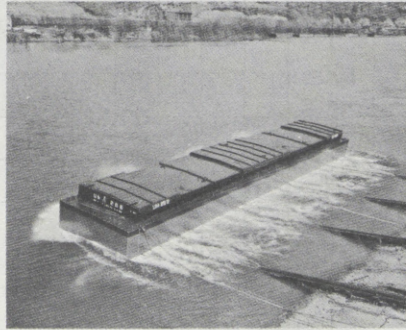
Present-day common carrier tow of average size.



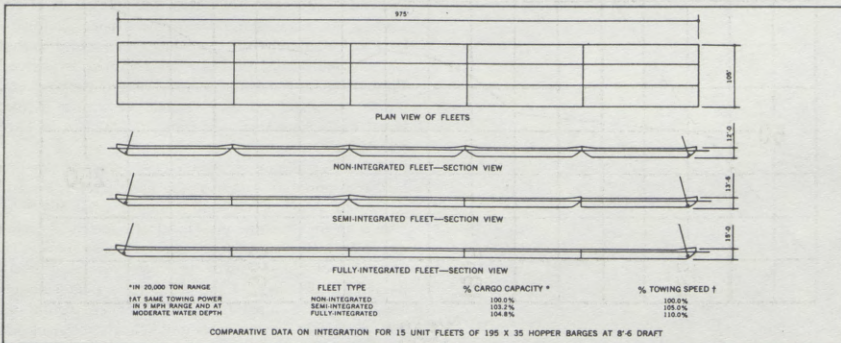
Standard open hopper barge, 175' long x 26' wide.

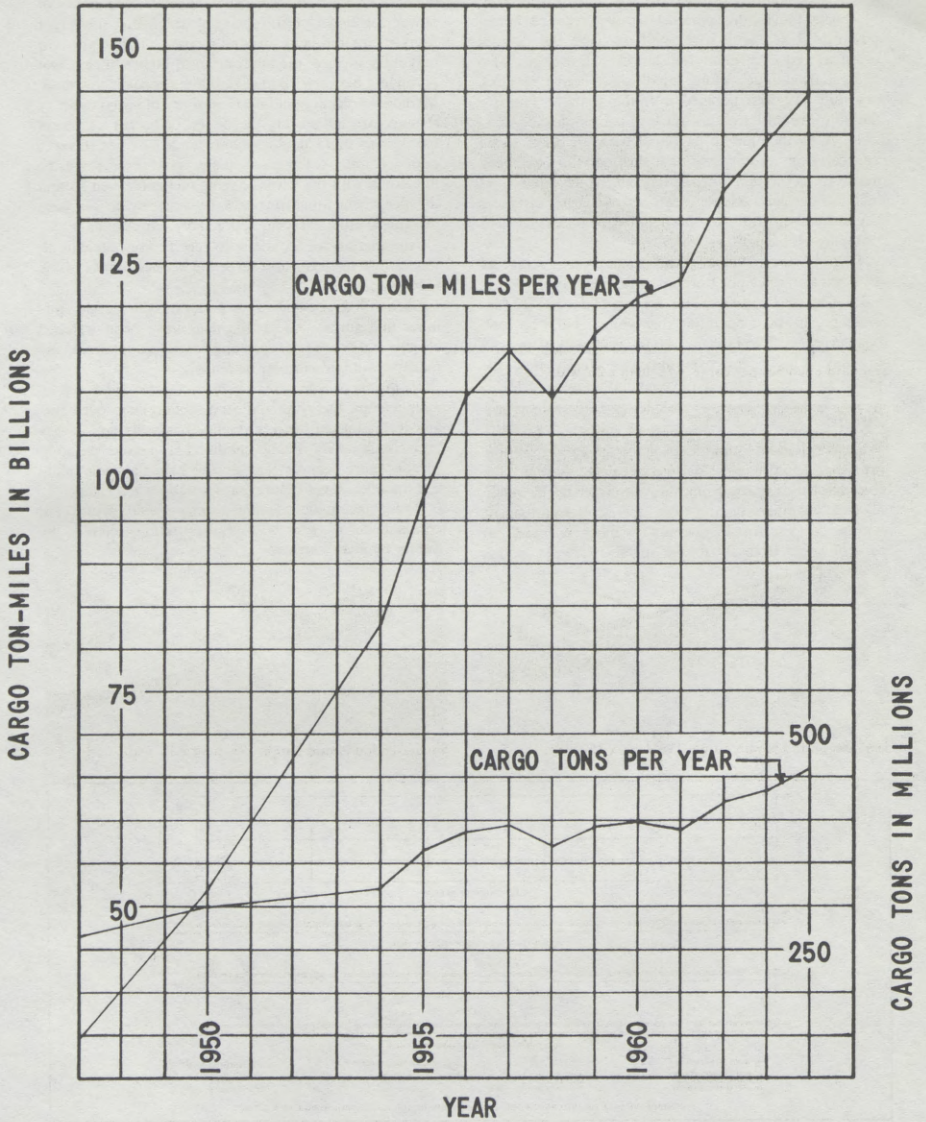


Semi-integrated jumbo barge, 195' long x 35' wide.



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





WATERBORNE CARGO TONS & TON-MILES PER YEAR

(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.

Mr. FRIEDEL. I want to think you, Mr. Eckhardt. You are a very valuable member of the Interstate and Foreign Commerce Committee. Your statement was brief and to the point and we thank you for it.

Are there any questions?

Mr. ADAMS. Mr. Chairman, I want to welcome our colleague here and I want to compliment him on his statement.

Would your amendment as set forth in H.R. 8298 allow mixing of the bulk commodities with nonbulk commodities at all points in the operation or just the upriver points?

Mr. ECKHARDT. It would treat the unit, the barge, as the unit governed by this section rather than the unit of the entire tow. This would be the case both on the first leg of a journey, as I gave in my example, and at upriver points after the tow was being moved up the river under a contract of towage.

Mr. ADAMS. Into a regulated set of barges by being able to inject them in without back effects, back up river where they came from, without an additional publishing of tariffs for those items over and above the tariffs required to be published on separate vessel. That very effectively destroys the no nonbulk mixing rule.

Mr. FRIEDEL. They wouldn't have to publish rates either?

Mr. KAHN. The commodities would be unregulated and therefore there would be no requirement that they publish rates; yes, sir.

Mr. ADAMS. Would the chairman yield for a question?

During the central segment of this, when you say nonpublished rates, the two comparisons are that you have a nonregulated bulk commodity, then you have the regulated carrier picking it up with other regulated commodities, and then the nonregulated portion transferred back to the exempt carrier and delivered so that the bulk goods go all the way without any regulation.

Under your amendment would the regulated carrier in the middle have to publish the rate that they are charging for carrying the nonregulated commodities or would they be able to carry the nonregulated bulk commodities on a straight contract between the regulated carriers and the nonregulated exempt carrier?

Mr. KAHN. Under the amendment as we conceive it, the towage would not be exempt in towage because the law very clearly reads that towage to be exempt must be for a regulated carrier.

Let me go back.

Mr. ADAMS. Wait a minute. To follow through, does that mean that the regulated carrier who is carrying the nonregulated companies would have made an actual study as to what potentially would be the effect as to how it would reduce the number of barges to a tow now.

You say that, in fact, as I recall it, it went up to 100 barges to tow. Is that correct, or even more?

Mr. ECKHARDT. Actually, practically speaking, the example I gave is a rather usual one, say. I was giving the comparison of 39 barges which included the tow that came in as an unregulated bulk tow, of say 13 barges, and then, say, 36 more picked up at that point.

All of these could go up the river as one tow. Of course, we can very easily calculate the difference in costs of carrying them up in one tow and carrying them up in three tows of 13 each. We will have testimony

on that. I am sure that Mr. Hershey of American Commercial Lines or Mr. Struble of Dravo Corp. or Mr. Mechling of Mechling Barge Lines or some of our expert witnesses like Mr. Ruppenthal of the Business School at Stanford University will further amplify the question of efficiencies with respect to the unit of operation.

The only thing I was saying was that it would be very difficult to determine what the total public cost of the change would be because we would have to determine a lot of variables with respect to that.

But it can be easily shown that the breaking up of the large tows into smaller tows composed of those commodities which are regulated on the one hand and unregulated on the other, would be a much, much more expensive operation as a unit.

Mr. FRIEDEL. Thank you very much. Mr. Pickle.

Mr. PICKLE. I will withhold my questions.

Mr. FRIEDEL. Our next witness was supposed to be Congressman Kluczynski, but he is chairing his own subcommittee hearing this morning and Secretary Volpe is testifying, so he regrets that he could not be here.

Now it gives me pleasure to introduce our very good friend and colleague, Congressman Jack Brooks of Texas.

STATEMENT OF HON. JACK B. BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BROOKS. Thank you very much. I will not take much time. I testified before this very fine subcommittee last year. I want to first thank you for the opportunity to appear and testify briefly concerning the water carrier mixing rule exemption.

I am delighted to see that you are again actively considering this problem, so vital to the economic well-being of my district and many other coastal districts throughout the Nation. I am hopeful this consideration by your subcommittee indicates a more optimistic future for this modest change.

The situation in my district is every bit as critical today as it was when I testified during your earlier consideration of this matter last year.

I would ask unanimous consent of the subcommittee to revise and extend my remarks at this point and if there are any questions as to the essential requirement of this for my area, I would be delighted to try and answer them.

Mr. FRIEDEL. Your full statement will be included in the record.
(Mr. Brooks' prepared statement follows:)

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The situation in my district is every bit as critical today as it was when I testified during your earlier consideration of this matter last year.

The Ninth Congressional District of Texas includes a substantial segment of the Gulf Intracoastal Waterway. My district has shared in the remarkable economic and industrial development which, in large part, has been due to the existence of this useful waterway. Low-cost water transportation has proved a reliable stimulant to industrial growth, enabling our industries to reach easily markets in the 26-State area served by the Mississippi River and its tributaries.

The barge lines operating along the Gulf Canal and on the Mississippi system, connecting industries in my district with Chicago, Pittsburgh, Minneapolis and St. Paul, and all the destinations in between, have, over the past 10 years, developed new technologies which have had the effect of making possible reductions in rates to their customers.

More powerful towboats have made possible the accumulation of larger towloads with a consequent reduction in the unit costs of transportation by barge. The same trend has taken place in other segments of the transportation industry. Large railroad freight cars, 10,000-ton "unit trains," larger volume pipelines, larger tanker vessels and larger airplanes are all designed to provide more economical transportation services.

Section 303(b) of the Transportation Act of 1940 is so worried that it restricts the ability of barge lines to mix regulated and unregulated commodities in a single tow and prevents the accumulation of a sufficient volume of barges to take full advantage of capacity of the large and more powerful towboats.

Unless the wording of the section is modernized, the barge lines will have to separate regulated and unregulated commodities and operate smaller and less economical tows. Costs will be increased, rates will have to go up, and industries—such as those in my district—adversely affected.

The solution is to remove from the section the sentence which defines a flotilla of barges as a single vessel. This would have the effect of allowing the mixing of regulated and unregulated barges and the accumulation of economical towloads.

The proposal has the enthusiastic support of labor, shipper, and farm groups, of the Department of Agriculture and the Department of Transportation in the last session, of port and river development groups, and of many of my colleagues whose districts border the river and canal systems.

The Interstate Commerce Commission has set a deadline of July 1, 1969, by which time the barge lines must conform their operations to the letter of this obsolete statute. Barge lines and their customers and the consumers of the products manufactured by the industries using inland water transportation urgently need this modernization of the statute. My district urgently needs this modernization. I therefore urge prompt action on this measure so that the barge lines may meet the deadline set for them by the ICC.

I want to thank you, gentlemen. If there is anything I can answer as to the effect in my district, I will be very pleased to try to do so.

Mr. BROOKS. You understand that everything in Houston that moves out of Houston by water goes through my district. We have a pretty substantial oil, chemical, rubber complex in that area which likes very often to add commodities to those tows which originate in Houston.

So, we have a very vital interest in this possibility.

I want to thank you for your help and ask you to think about it as carefully as possible. We don't feel that it will do anybody any great harm and it will be of incomparable value toward maintaining economic water transportation for a great part of the American industry.

Mr. FREIDEL. I want to thank you. I assure you we will give your statement very close consideration.

Are there any questions?

Mr. DINGELL. Mr. Chairman, I would like to say how pleased I am to see your old friend, Mr. Brooks, here. He is an extremely valuable member of this Congress. I have been his admirer and friend for

a long time. I will certainly find anything he says to be most persuasive.

Mr. FRIEDEL. Thank you, Mr. Brooks.

Mr. BROOKS. Thank you.

Mr. FRIEDEL. Our colleague, Congressman Abernethy, is our next witness.

**STATEMENT OF HON. THOMAS G. ABERNETHY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MISSISSIPPI**

Mr. ABERNETHY. I appreciate the privilege, Mr. Chairman, of appearing before this committee with regard to this legislation.

The State of Mississippi has prospered and grown to a significant degree because of the influence of low-cost barge transportation on the Mississippi River. At the same time, the expansion of river transportation has resulted in the development of a towboat and barge building industry in such centers as Greenville, Miss.

I appear here in support of the modernization of the dry-bulk exemption in H.R. 8298 because of the very vital concern of my State for the continued efficiency of barge transportation on the inland rivers.

A trend has developed in such centers as Greenville to the construction of larger and more powerful towboats and larger capacity barges. With this more efficient equipment, flotillas of barges are now increasing in size and with that increase comes an opportunity for greater economies and lower freight rates.

The present wording of section 303(b) as interpreted by the ICC would result in a serious setback for the new efficiencies of the barge industry. Over the past 2 years, the impact of the ICC decision has been postponed because both the House and Interstate and Foreign Commerce Committee and the Senate Committee on Commerce unanimously requested a stay from the ICC. This stay now expires on July 1.

I am greatly impressed by the broad support there is for this measure among agricultural and industrial interests. Most of the best known and largest industrial companies support this measure either individually or through their trade associations. The farm, fertilizer, and grain interests need the legislation and strongly support it.

It seems to me that there has been adequate time to review the facts developed in support of this measure. I am very hopeful that the bill will be favorably reported before the ICC deadline of July 1. We need it in Mississippi.

Mr. FRIEDEL. Thank you very much.

Our next witness will be Congressman Fulton of Pennsylvania.

**STATEMENT OF HON. JAMES G. FULTON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. FULTON. I am glad to appear before this committee. You are getting the other extreme. I represent the geranium pot farmers of the city of Pittsburgh up the river. As a matter of fact, I represent the great Neville Island industrial chemical and ship building area near the city of Pittsburgh in Pennsylvania. It is a major industry for us in our whole State.

My feeling is that the rivers are one of the greatest assets we have in the United States because they open up the whole center of the country and make every one of these cities that are inland cities ocean cities just as the Great Lakes have been opened up by the St. Lawrence Seaway.

This is one of the few industries I know of where in the statute it says that it is frozen in cement with the paragraph like this under section 303(b) :

This subsection shall apply only in the case of commodities and bulk which are, in accordance with existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939.

That is freezing for 30 years. This is 1969. We are getting to be much more consumer minded, we producing States and industries. Of course, the consumer wants the most efficient industry and, therefore, the lower price.

So that actually we people that are testifying this morning for these bills are testifying for freeing American industry, letting it be efficient, give the consumer the advantage of the reduced price, the reduced expenses and don't have the Government by arbitrary rules increase costs, expenses, and living prices.

I have a statement that I will read very quickly. I am grateful for this opportunity to appear this morning in behalf of H.R. 8398 sponsored by Mr. Kuykendall of Tennessee and H.R. 8376 by Mr. Eckhardt of Texas.

When we think of the increases in labor costs, the increases in material costs and the increases of inflation which have taken place in the past 40 years, the simple fact that technological advances have been able to contain these pressures is a remarkable tribute to the engineering capacity of such U.S. shipyards.

As a direct result of increased productivity, average barge rates have been lowered in recent years. It is good to know that the average river transportation barge rates today are at about the same level they were in the 1920's. So that nobody but nobody can complain that these people engaged in this industry are outrageously charging the consumers any more than they should be charged.

There is no attempt here to make other than a legitimate profit. The Interstate Commerce Commission and both the House and Senate committees of Congress have wisely postponed the application of an order that would result in the breaking of efficient sized tows.

In my opinion, the United States cannot afford in the present state of progress to lose the benefit of any engineering advance which results in greater productivity, better efficiency, lower costs and lower prices to the consumer.

I am a member of the Science and Astronautics Committee and I see several members who are here that are also members and have been members.

Our job there is to raise the sights of U.S. industry, research and development, so that we have a better technological advance and a lower system of costs as well as transportation costs than any other nation. This I believe will have a tremendous savings and keep the costs of transportation down to the great bulk of the population of this country.

I will submit the statement and I am very glad to appear before the committee.

(Mr. Fulton's prepared statement follows:)

STATEMENT OF HON. JAMES G. FULTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I am grateful for this opportunity to appear this morning in support of H.R. 8298 by Mr. Kuykendall of Tennessee and H.R. 8376 by Mr. Eckhardt of Texas, bills to modernize section 303 (b) of the Interstate Commerce Act.

My Congressional district has a special interest in the success of these bills. Within my district are the engineering works of the Dravo Corporation which is the inland waterway industry's leader in the pioneering of technological advances. These advances have dramatically increased the productivity of the inland barge industry over the past few decades. As a direct result of that increased productivity, average barge rates have been lowered in recent years. It is good to know that average river transportation barge rates today are at about the same level they were in the 1920's.

When we think of the increases in labor costs, the increases in material costs and the increases of inflation which have taken place in the past 40 years, the simple fact that technological advances have been able to contain these pressures is a remarkable tribute to the engineering capacity of such United States shipyards.

The technological improvements have rendered obsolete the present wording of the dry-bulk exemption, Section 303 (b) of the Interstate Commerce Act. Under this wording, as interpreted by the Interstate Commerce Commission, it would be impossible for the barge lines to make effective and efficient use of the capacities of the large towboats such as are now being built.

The Interstate Commerce Commission and both the House and the Senate Committees of Congress have very wisely postponed the application of an order that would result in the breaking up of the efficient sized tows. The U.S. cannot afford, in the present state of progress, to lose the benefit of any engineering advance which results in greater productivity, better efficiency, lower costs and lower prices to the consumer.

The inland waterways handle nine percent of United States inter-city freight, but so low cost are these services that they cost only one half of one percent of the total revenue for freight transportation in the nation.

Congress certainly should give the United States consumer the benefits of improved technology. I therefore urge this Committee to report H.R. 8298 favorably and authorize the mixing of regulated and non-regulated commodities in a single tow. Such action will enable United States barge lines to accumulate enough barge cargoes to make efficient use of the present capacity of towboats. Important to the future welfare of our people living in the Mississippi-Ohio Valley is the encouragement that the passage of this bill will give to engineers of U.S. shipyards to develop more efficiencies for the benefit of the U.S. consumers. There must be no artificial legislative bar to increased technological efficiency.

I am aware that competitors of the barge lines may well provide opposition to this bill not on the grounds that it is a bad bill, but on the grounds that they also want consideration. It is the duty of Congress to judge every bill on its own merits. H.R. 8298 and H.R. 8376 are clearly in the public interest. I urge their prompt passage.

Mr. FRIEDEL. We thank you very much.

Mr. WATSON. Mr. Chairman, as I was listening to our distinguished friend from Pennsylvania, I was thinking to myself he has got both ends of the transportation spectrum. He just got the man on his way to the moon and the rocket and now you are here in behalf of one of the slower modes of transportation, I guess, the barges.

So certainly you have covered the waterfront literally and figuratively. We appreciate your statement.

Mr. FRIEDEL. Thank you.

Mr. FULTON. Thank you.

Mr. FRIEDEL. We have another colleague here today, Congressman Mollohan of West Virginia.

**STATEMENT OF HON. ROBERT H. MOLLOHAN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WEST VIRGINIA**

Mr. MOLLOHAN. Mr. Chairman, I would like to express my gratitude to the committee for taking up this very important legislation. Also, I appreciate this opportunity to personally appear here before you this morning.

We in West Virginia, of course, are a part of the so-called Appalachian area and usually referred to as, to some degree or other, a depressed area.

Massive efforts have been made in the last several years to turn us around economically. One of these great efforts has been made in the field of transportation. Most certainly one of the important fields in the area of transportation to us is waterways.

Many millions of dollars have been spent on the development of the Ohio River and the Monongahela River. These have been very productive. This is a means of transportation which is vitally important to us because it treats with bulk commodities in large part.

In West Virginia we are basically dependent upon coal, petroleum products, chemicals, and steel, all of which either in the input or output sense require bulk transportation.

Therefore, it would be impossible for me this morning to exaggerate or overstate the importance of water transportation to the economy of West Virginia.

I have no intention of belaboring any of the other fields of interest here, the technological or the impact economically on any other areas of transportation that this legislation might have. In fact, I can see no impact whatsoever on other fields or other methods of transportation.

I sincerely hope that this committee will act promptly and favorably upon this legislation. It is extremely important to us in West Virginia and I think to other areas of the United States as well.

I have a statement here, Mr. Chairman, which with your permission I would like to have included in the record.

Mr. FRIEDEL. Without objection it is so ordered.

(Mr. Mollohan's prepared statement follows:)

**STATEMENT OF HON. ROBERT H. MOLLOHAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF WEST VIRGINIA**

Mr. Chairman, as you are aware, the State of West Virginia is heavily dependent on efficient barge transportation for the marketing of its coal, for the raw materials which supply its steel mills, for the distribution of its steel products and for the health of its chemical industry, among many other industries using barge transportation. This committee has before it three identical measures, H.R. 8298, H.R. 8376 and H.R. 8509, which make a very small change in section 303(b)—the so-called dry-bulk exemption. The change is required by the development of new technology over the past fifteen years. Larger towboats, larger barges and larger tows have made possible development of new economies of scale on the inland rivers. Where 15 years ago, tows of 10,000 to 15,000 tons were common, today the average tow carries over 30,000 tons, and some operate with 40,000 tons of cargo. This remarkable advance in technology has led to a decline in the average rates of the barge lines.

Unless these bills are passed, however, the barge lines will be required on July 1 to split up their large tows and revert to a much less efficient method of operation. Costs will be artificially increased and rates will trend upward instead of downward.

In a time of inflation, I cannot believe that the Congress will allow this new technology to be discarded particularly when there is such widespread recognition through industry and agriculture of the need for greater efficiency and lower transportation costs.

We live in a period of rapid change in technology. We must seize the fruits of the engineering advance as they become available. I am aware that some will argue that we ought to delay our consideration of this bill until all issues involving transportation can be settled. I suggest that that is a counsel designed only to block this meritorious measure. The case for this bill has been fully developed; the facts are clear. The agricultural and industrial interests have made known their support of this measure. Labor supports it. The particular solution was reviewed and endorsed by Agriculture, Justice and the Department of Transportation in the last session. I suggest this bill is ready to be considered on its own merits.

We need this bill in West Virginia, Mr. Chairman, and I hope you will help us get it.

Mr. MOLLOHAN. I would like to express my gratitude to you for acting upon this legislation promptly and favorably.

Mr. FRIEDEL. Are there any questions?

Thank you.

We have a statement in favor of these bills from Congressman Hale Boggs of Louisiana and also one in favor from Mr. Kluczynski of Illinois, and we have statements from Congressman Frank Clark of Pennsylvania, and Mrs. Leonor Sullivan from Missouri, and Congressman Bob Corbett of Pennsylvania in favor. These statements will all be included in the record at this point.

(The statements referred to follow:)

STATEMENT OF HON. HALE BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

I appreciate this opportunity to present my views in support of my bill, H.R. 8509, and identical companion bills, to modernize section 303(b), the so-called dry bulk exemption. There is little reason to stress the importance of this measure to my district, to New Orleans, and the great industrial complex that has grown up in my area since World War II.

Barge transportation on the Mississippi River connecting my area with the 26-State region of the Mississippi River system and the Gulf Intracoastal Canal has helped stimulate what some people have called a nearly miraculous industrial flowering.

Efficient rail, truck, and pipelines service have all contributed to this growth, but it has been barge transportation that has been its mainstay.

The issue before us is quite simple. Technological development has paved the way for the safe, efficient transport of larger and larger river tows over the past ten years. Today, tows of 40,000 tons are not uncommon and the opportunity exists for even larger tows. However, in order to accumulate the most economical tows, the barge lines must continue to be permitted to mix regulated and unregulated commodities.

The economies of the volume movements have already been passed along to the customers and consumers along the river valleys. Failure to pass H.R. 8509 will mean that the barge lines will have to separate regulated and unregulated barges, run smaller tows and give up the advances made possible by the new, more powerful towboats. In a time of rising costs and prices, we would be the unwilling instrument forcing cost and rate increases on the river carriers. In the long run, we would be applying the brakes to the kind of development that has taken place in my part of the country.

A deadline of July 1, 1969, hangs over us all. On that date, the new technology will, in effect, be cancelled and the barge lines left with no alternative but rate increases.

Our issue here is simply one of preserving the technological advances of the barge lines of the past ten years. There is no question that this is very much in the public interest. I am hopeful that this committee will adopt the proposal very promptly so that we can get it passed in time to meet the July 1st deadline.

Thank you.

STATEMENT OF HON. JOHN C. KLUCZYNSKI, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I urge your prompt and favorable action on H.R. 8298, 8326 and 8509, and I appreciate your allowing me to do so.

I help to represent, as you know, the largest city in mid-America, and one of the busiest ports in the nation. A tremendous amount of barge traffic moves in and out of Chicago's harbors, serving not only Chicago and the mid-west but the entire country as well. Throughout my service here in the Congress, it has been my task, and my privilege, to serve as the advocate of the continuing development of our waterway and harbor growth in the mid-west, so I know well the commerce involved and what it means to all of us.

The bills before you today would modernize section 303(b) of the Interstate Commerce Act, the so-called dry-bulk exemption. The amendment is urgently needed, and it has the enthusiastic support of the Chicago Regional Port District, the Chicago Association of Commerce and Industry, and the Department of Business and Economic Development of the State of Illinois. Aside from support from public bodies, industry and agriculture in the State of Illinois, these bills also have broad support from labor, ports, farmer organizations, shippers and industries throughout the nation.

I add my own wholehearted endorsement. We are all concerned with the impact of inflation on the economy. The barge lines serving Chicago and linking Chicago with numerous important markets at home and abroad account for about nine percent of the inter-city freight. Technological advances, particularly in the last ten years, have enabled them to handle from 20 to 40 barges in a single tow, and to reduce their average rates. Passage of these bills would enable the inland water carriers to continue to apply their present technological innovations and free them to develop new efficiencies. It is noteworthy that although the inland water carriers handle nine percent of the inter-city freight, so low cost is their service that they receive in revenue less than half of one percent of the nation's annual freight bill.

Failure to enact this legislation would severely curtail river, and harbor operations and would be a serious blow to the economy and efficiency of our inland waterway transportation system. Artificial cost increases would inevitably be passed on the consumers at all levels, and higher prices is certainly one thing we don't need, from any source.

We are grateful for the committee's action last year in postponing enforcement of the obsolete language of the present statute, and I hope you will be able to report this legislation in time to meet the July 1 deadline, and so that our waterway transportation system can continue to move forward in its outstanding service to the nation's commerce and industry.

STATEMENT OF HON. FRANK M. CLARK, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

I am pleased to have an opportunity to add my voice to the bi-partisan Congressional delegation from the Pittsburgh region in support of H.R. 8298.

I have watched with growing concern the difficulties of the barge lines in winning approval of this measure by the Congress. It seems crystal clear to me that we must not discourage the engineering progress that has been made in the improvement of inland barge productivity nor must we foreclose future engineering advances because of an obsolete sentence in a law passed almost 30 years ago.

I have been greatly impressed by the widespread support for this measure that exists throughout the economy. I have here a copy of a leaflet which the Water Transport Association has circulated listing the support which developed for this measure in the last Congress. I see endorsement from the Senate Committee on Commerce, the Justice Department, the Department of Transportation, and the Department of Agriculture. I see supporting statements by leading Congressmen. The ICC has no objection. I see steel companies and the National Industrial Traffic League enthusiastically in support. I see many farm organizations, grain and feed dealers, cooperatives, fertilizer groups. I see the coal industry solidly behind this measure. I see the chemical industry lined up solidly in support. I see labor in support, I see dozens of individual companies represented either through associations or individually. I see the ports of Memphis, Chicago, New Orleans and Houston and the National Association of Port Authorities. I see

Chambers of Commerce and the industrial development departments of the States of Illinois, Kentucky, Louisiana and Indiana as well as many organizations devoted to regional economic development.

I must add my voice as strongly as I can to this broad and representative support from diverse segments of the economy. In a time of rising prices and inflation, we must not discard engineering improvements which lead to lower costs and lower prices. I urge prompt passage of this bill as necessary to the economy of my district and the Pittsburgh region.

STATEMENT OF HON. LEONOR K. SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MISSOURI

Mr. Chairman, thank you for the opportunity to present my views in support of H.R. 8298, H.R. 8376 and H.R. 8509, which are identical bills proposing a modernization of section 303(b)—the so-called dry-bulk exemption—of the Interstate Commerce Act.

St. Louis, as you are no doubt aware, is heavily dependent on efficient river transportation for its economic well-being and for prospects of future growth and expansion. It is the headquarters of five major barge lines and one of the leading inland shipyards of the nation.

I have recently had occasion to inspect personally the operations of the barge lines on the Mississippi and observe the economies of the big towboats. We in St. Louis are proud of the fact that the two largest and most powerful towboats—the 8,500 horsepower America and United States—operated by Federal Barge Lines were designed and built in St. Louis.

These boats represented very significant advances in engineering development of tremendous importance to the economy of the Mississippi Valley and urgently needed by the people of my district.

The pioneering and development at St. Louis Ship and other inland shipyards is continuing. New large towboats are being built, each more efficient than the last. The result has been a steady decline in average freight rates for those commodities adapted to river commerce. This decline, despite increased costs of labor and material, is a major triumph in a time of inflation and is a significant contribution to the efficiency of production of agriculture and industry in the river valley.

The mixing rule legislation before you has a long history. It has been thoroughly explored and tested by the I.C.C., by the Departments of Justice, Agriculture and Transportation in the last session. It has virtually unanimous support from labor, industry, shippers, farmers, state industrial development groups and economic development groups of the river valleys. To my knowledge, there has never been a bill in the transportation industry so thoroughly in the public interest.

I am fully aware that there are many other problems in transportation which yet remain to be solved. This nation needs efficient rail service and efficient truck service and efficient air service. It is the magic interaction of all the different modes which contributes so much to the increasing efficiency of the American economy. But I do not think it makes sense to keep the barge industry in a state of continual uncertainty, year after year, on this clearly meritorious proposal. We cannot wait until all problems are settled at once before we handle small improvements. If we do we will never make progress on anything.

I hope the Committee will see fit to vote this proposal out favorably in time to meet the Commission deadline. The record has been well made, the facts are clear and the measure should be considered and adopted on its own merits. My district and the Mississippi Valley urgently needs this bill and I hope you can help us get it by July 1.

STATEMENT OF HON. ROBERT J. CORBETT, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

It is a pleasure to have the opportunity to urge this committee to listen to my friend, the Executive Vice President of the Dravo Corporation, Lou Struble, Jr., in support of H.R. 9298. (See pp. 60, 61.)

I have read with pride Mr. Struble's account of the technological developments of barge line service on the inland waterways as set forth in the printed booklet which will become a part of your record.

We in the Pittsburgh area are heavily dependent on efficient river transportation and it is a source of satisfaction to me that so much of this technological pioneering was developed in Pittsburgh.

The issue before your committee seems to my constituents, the companies and their workers who make effective use of river transportation, a simple matter of deleting an obsolete sentence from section 303 (b) of the Interstate Commerce Act which now blocks the efficient use of the larger and more powerful towboats. In a time of inflation, surely first priority must be given to encouraging technological improvements leading to greater productivity, lower costs and lower prices to the consumer.

I am impressed by the fact that the solution proposed in the 90th Congress, now put forward again in an identical bill, was reviewed by the Department of Transportation, by the Department of Agriculture and the Justice Department and endorsed as the solution which would serve the public interest.

But I am mostly impressed by the fact that unless this bill is passed, the Congress and the Commission will be parties to forcing artificial cost increases on the barge lines. I would have difficulty justifying in my district a failure on our part to find a way to allow the engineering advances described by Mr. Struble to make their maximum impact in producing lower prices. What reasonable explanation could I make when I go home to charges that we have cancelled out the engineering progress of the inland shipyards and encouraged increases in costs and rates?

I urge you therefore to pass this useful and meritorious bill as promptly as possible so that the July 1 deadline set by the Commission may be met. I applaud the wisdom of the postponements which have enabled the barge lines, so far, to keep operating in an efficient manner. But, particularly in a time of rising money costs, decisions on future capital investment are most difficult to make. Are the barge lines to go ahead investing in big towboats or must they revert to a technology of 15 years ago? I believe they are entitled to a prompt answer, not further postponements. I appreciate the heavy workload of this committee, but I would be derelict in my duty to my district if I did not urge most strongly that this matter be disposed of favorably and promptly.

Mr. FRIEDEL. It now gives me a great deal of pleasure to call on the Chairman of the Interstate Commerce Commission, Mrs. Virginia Mae Brown. I understand you have some other members of the Commission with you today, Madam Chairman.

STATEMENT OF HON. VIRGINIA MAE BROWN, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY COMMISSIONERS DALE W. HARDIN AND WALLACE R. BURKE; FRITZ R. KAHN, DEPUTY GENERAL COUNSEL; AND NOAH PRAWDE, CHIEF, WATER CARRIERS SECTION, BUREAU OF OPERATIONS

Mrs. BROWN. Yes, I do. I have with me this morning Commissioner Dale W. Hardin, Commissioner Wallace R. Burke. Also, I have with me at the witness table Fritz R. Kahn, who is Deputy General Counsel, and Mr. Noah Prawde, who is head of the Section of the Water Carriers of the Bureau of Operations.

Mr. Chairman and members of the subcommittee, on behalf of the Commission, I wish to thank the subcommittee for the opportunity to express our views on these three identical bills which amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions on the application and scope of the exemption provided in that section.

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. This 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 while navigated as a unit shall be considered to be a single vessel."

The changes proposed by these bills would (1) strike the parenthetical expression from the second sentence and (2) strike the third sentence entirely. As amended, the pertinent part of subsection 303(b) would then 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 subar, were carried by water carriers in containers as of June 1, 1939, but because of efficiency and convenience are now carried in bulk by modern barges and tankers.

Considerable litigation has also arisen over the second limitation in section 303(b). Unless expressly exempted under the act, transportation performed by carriers engaged in towing and affreightment on inland waterways is subject to regulation by the Commission. Such carriers 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 annual or other reports with the Commission; and comply with other regulatory requirements. Under section 303(b), transportation of not more than three bulk commodities in a single vessel is exempt from Commission regulation. Such transportation may therefore be performed without regard to the requirements for certificated route authority or adherence to published tariff rates. As I have mentioned previously, the term "vessel," as used in present section 303(b) refers to two or more vessels navigated as a single unit. Put differently, a flotilla of several barges operated as a single tow is considered as one "vessel." In a number of proceedings since 1941, the Commission has considered the scope and application of the exemption afforded by section 303(b) to water carrier tows which "mix" cargoes of bulk and nonbulk commodities.

In these proceedings, 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 such cases, 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)¹. This position has been sustained by the Supreme

¹ 311 I.C.C. 105 sustained *Gulf Canal Lines, Inc., v. United States*, 258 F. Supp. 864 (1966) affirmed *per curiam*—386 U.S. 348 (1967).

Court. 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 bulk commodities under so-called contracts of affreightment. After entering into such a contract with a shipper, a noncertificated bargeline 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 with nonbulk commodities in a single tow.

The net effect of this decision, which would be overturned by these bills, is to require the carriers involved in cease the transportation of "mixed" tows or, in the alternative, subject the transportation of otherwise exempt bulk cargoes to economic regulation by the Commission when such commodities are transported with nonexempt cargoes.

The effect of the bills before you on the present section 303(b) will be to simplify the terms the exemption afforded by this section. At the same time, they will broaden its scope. The transportation by water of all commodities in bulk—except those carried 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), these three bills would broaden the scope of the exemption in two ways. First, it would overturn the Commission's determination that the mixing of exempt and nonexempt commodities subjects the entire water carrier movement to regulation. Second, because this deletion would eliminate the present standard that two or more vessels; that is, barges, operated as a single unit shall be considered as a "single vessel," the present limitation of three bulk commodities in a single tow would be eliminated.

Since, by virtue of this change, each barge in a tow would constitute a separate and distinct "vessel" for purposes of the three-commodity limitation, a tow of 20 barges, for example, could lawfully contain as many as 60 different bulk commodities.

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. We continue to believe that the continuance of the present exemption is neither conducive to fair and effective regulation nor to effectuation of the goals of the national transportation policy. At the same time, 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 could easily preclude the carriers from making efficient and economical use of their equipment and facilities while the second would place certain water carriers in a poor competitive

position with respect to other competing water carriers who tow only bulk cargoes and thus would be fully within the exemption afforded by present section 303(b).

In these circumstances, the committee may wish to consider an amendment to section 303(b), the principal effect of which would be to overrule our decision in the *Mississippi Valley* case. This alternative would be in the nature of a substitute for the three bills before this committee and would permit the transportation of bulk commodities in mixed tows with regulated commodities. A copy of our proposal is attached at the end of my prepared statement.

While we continue to believe that repeal of this exemption is desirable, favorable consideration of our proposal would at least serve to alleviate any adverse economic effects of our decision as between competing water carriers. At the same time, the existing inequalities between competing modes, which I have described previously will not be intensified.

This concludes my prepared remarks, Mr. Chairman, I would be happy to respond to any questions you or other members of the committee might have.

(The proposed amendment referred to follows:)

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 8298, H.R. 8376,
AND H.R. 8509

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 by inserting after the second sentence the following: "The transportation, subject to the provisions of this part, of commodities not in bulk, or commodities in bulk at rates lawfully filed, or both, shall not prevent the application of the provisions of this subsection to the concurrent transportation in the same vessel of commodities in bulk moving under the exemption provided in this subsection."

Mr. FRIEDEL. I want to thank you for your very fine and clear statement along with your suggested amendment. It is always a pleasure to have you appear before us.

Mrs. BROWN. Thank you.

Mr. FRIEDEL. Madam Chairman, can you tell us what would happen if we didn't pass this legislation? What would be the outcome?

Mrs. BROWN. The effective date, as has been stated here this morning, would be July 1, where the exemption would end as far as the enforcement of the act which is law now—would end June 30 and on July 1, that would go into effect.

As to the principal effect as far as on the water carriers, I would like to have our Deputy General Counsel, who is prepared, to give you an answer on this question.

Mr. KAHN. Mr. Chairman, I think the effect would be that the operations by the barge lines would have to be brought into compliance with the law as it now appears on the books. The efficiency of operations could continue as at present, the large tows could be operated by the carriers.

However, they would have to publish rates for the bulk as well as the nonbulk commodities.

Mr. FRIEDEL. In my opening statement, I said that if the water carriers are to be free from regulation on bulk commodities the rail

carriers feel they should be given the same treatment. I gathered from your statement that is one of the things that you suggested. Am I correct?

Mrs. BROWN. From the statement as such, it is directed—

Mr. FRIEDEL. You said almost.

Mrs. BROWN. Our position has continually been that there has been an unequal treatment in the inequality in the all modes proposition which relates to railroads.

Mr. FRIEDEL. Would your proposed amendment take care of that particular?

Mrs. BROWN. No, it would not. Our proposed amendment would take care of the *Mississippi Valley* case, of the holdings in the *Mississippi Valley* case.

Mr. KAHN. If I might amplify, the Commission at this point does not support the suggestion of the railroads that they be afforded a bulk commodity exemption. The Commission feels, however, that its amendment would more equitably regulate both the railroads and the barge lines, place them on a greater par of regulation than nonenforcement of W-C-5 by the Commission under the postponement of the effective date now permits.

Mr. FRIEDEL. It is my understanding that your proposed amendment does go further than the mere overriding of the Mississippi Valley ruling.

Mr. KAHN. It certainly was not the intention of the Commission to frame the language so as to do anything other than override the *Gulf* decision. We think it does no more than that.

Mr. PICKLE. Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. If I understood your earlier, you said if we did nothing as of July 1, the exemption would be lost but that the barges could move their commodities if they in effect filed rates.

Mr. KAHN. Yes, sir.

Mr. PICKLE. What is the difference of that position and the amendment that you have submitted to us here in which you said the transportation of these commodities in bulk rates lawfully filed or both wouldn't prevent the moving of these goods.

What is the difference between what you have proposed and what you said would go into effect if we took no action?

Mr. KAHN. The Commission's amendment would permit the transportation by the regulated barge lines of bulk commodities at unpublished rates in mixed tows with nonbulk commodities.

Mr. PICKLE. At unpublished rates?

Mr. KAHN. Yes, sir, negotiated contract rates as they presently are using.

Mr. DINGELL. Would you yield?

Mr. PICKLE. I don't have the floor.

Mr. FRIEDEL. Yes, Mr. Dingell.

Mr. DINGELL. You said that this would only overrule—the amendment that you drafted—the *Mississippi Valley* case. Am I correct?

Mr. KAHN. That is correct, sir.

Mr. DINGELL. My understanding of this is not as clear as I would like to have it be. But as I understand it, there were two cases, actually a whole series of cases that are involved in the legislation before us.

Mr. KAHN. That is correct.

Mr. DINGELL. As I understand it, the first case, the earliest case, dealt with the section of the Mississippi below the confluent of the Missouri and the Mississippi. Am I correct?

Mr. KAHN. No, sir, You are not correct. I think the location of where the mixing occurs is immaterial. I think there is somewhat widespread confusion as to the relationship between the towing exemption and the bulk commodities exemption.

I think the illustration you have before you addresses itself to that.

The Commission, since 1941, has read the existing legislation as not permitting the mixing of bulk and nonbulk commodities.

Mr. DINGELL. So this is a very ancient decision?

Mr. KAHN. It is a very ancient decision. It has been through the courts at least twice. It has been summarily affirmed by the Supreme Court at least twice. The effect of the bills that are before you would be to throw out the no nonbulk mixing rule because it would treat each barge as a separate vessel. That very effectively destroys the no nonbulk mixing rule.

Mr. FRIEDEL. Would this mean that they wouldn't have to publish rates either?

Mr. KAHN. The commodities would be unregulated and therefore there would be no requirement that they publish rates, yes, sir.

Mr. ADAMS. Would the chair yield for a question?

During the central segment of this, when you say nonpublished rates, the two comparisons are that you have a nonregulated bulk commodity, then you have the regulated carrier picking it up with other regulated commodities, and then the nonregulated portion transferred back to the exempt carrier and delivered so that the bulk goods go all the way without any regulation.

Under your amendment would the regulated carrier in the middle have to publish the rate that they are charging for carrying the nonregulated commodities or would they be able to carry the nonregulated bulk commodities on a straight contract between the regulated carriers and the nonregulated exempt carrier?

Mr. KAHN. Under the amendment, as we conceive it, the towage would not be exempt towage because the law very clearly reads that towage to be exempt must be for a regulated carrier.

Let me go back.

Mr. ADAMS. Wait a minute. To follow through, does that mean that the regulated carrier who has got the nonregulated commodity that he has picked up, does he have to charge a published rate for that portion of the carriage or not?

Mr. KAHN. He must publish a tariff towage charge, yes. Not an affreightment charge, a tariff towage charge.

Mr. ADAMS. He hauls that barge for a published rate, just like he hauls any other barge at a published rate, but not at a commodity charged published rate?

Mr. KAHN. The carrier, of course, is free to set the rate where he wishes. The initiative for publishing that rate is his. But I think, Mr. Congressman, what you are driving at is whether that transportation by the regulated carrier for that middle segment comes within the exemption afforded the incidental towage of freight by section 303 (f) (2). I do not conceive of it covering that situation.

Section 303(f) (2) covers the transportation by water for a water carrier subject to this part in the performance of towage services.

Mr. ADAMS. So he charges a regulated rate, either towage or another type of rate, the regulated carrier charges a regulated rate?

Mr. KAHN. Yes.

May I go back and explain very briefly the effect of the Mississippi decision?

Mr. ADAMS. I know that. That runs it back up river, makes the original part regulated.

Mr. KAHN. Our proposal would continue to allow the regulated bargelines through their nonregulated affiliates to affreight the bulk commodities without tariff publication. So that the movement from point A to point D would be—

Mr. ADAMS. To the shipper a nonregulated contract of affreightment, but what I am getting at is they have their affiliates and so on but I want to know if they are required to publish a rate so if I am not one of their affiliates and I come up with a barge load of commodities so that I get the same price for towing up the river by the certificated public carrier as their affiliate does.

Mr. KAHN. Yes, sir, and they are doing this now. They always have. It is regulated now. It always has been, Mr. Congressman. One of the very points made by the bargeline industry in the court case that wound up in the Supreme Court was that they should not be subject to regulation from point A to point D because they already are subject to regulation for the towage operation between points B and C. That was the very argument advanced by the industry.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. Mrs. Brown, this alternative that you or the Commission suggests, do you know the position of either the railroads or the bargelines on this proposal?

Mrs. BROWN. I really don't, Mr. Devine.

Mr. DEVINE. The Commission has twice stayed its order even though sustained by the circuit court and the Supreme Court primarily through request of the House and Senate Commerce Committees.

You wouldn't recommend that again, would you? Do you think this matter ought to be settled once and for all instead of coming up here every year with the same problem and hearing the same testimony?

Mrs. BROWN. Certainly, Mr. Congressman, I have to say to you and on behalf of the Commission that we certainly think that for the best of the administration of the laws and so on of this country, that the matter ought to be settled.

As the history of this matter will indicate, the Commission has stayed the matter at the request of Congress and even before that, I think.

So, it is extremely important. It would be better to settle it. However, it is a very hard problem, I am sure, as indicated by much of the interest here today.

So the Commission is trying to be helpful in regard to this matter.

Mr. DEVINE. I think you have demonstrated that by submitting an alternative proposal here. I would like to have the benefit of your opinion or of the other two Commissioners that are present on two things: No. 1, say we did nothing and that your order went into

effect July 1. Is this going to have such a tremendous economic impact on the bargelines or on the railroads that either or both will go out of business?

Mrs. BROWN. As has been testified to, if they had made a study of what had been done—however, the movement of these commodities by water and by rail has moved it to certain rates now which indicated that it is a reasonable rate for it to move by.

I would think that the impact as such, that that is a gage to go by and if either Commissioner Hardin or Commissioner Burke would care to amplify a little bit—I was giving you the benefit of what I feel in regard to it.

If they would like to, I would be happy for them to.

Mr. DEVINE. The other part of the question was, the other extreme, if I may use that term, where the railroads take the position that they should both be put on an equal standing, what impact in your opinion would occur either all regulated or nonregulated?

Again, just drawing on your experience in the field.

Mrs. BROWN. My personal opinion, and that is all I am speaking for, I wouldn't think the impact is so great.

Mr. KAHN. I would like to suggest that the Commission previously, in previous Congresses, has testified in opposition to deregulation of bulk rail transportation feeling that the bulk rail transportation constitutes so major a portion of the operations performed by the railroads that such an exemption, such a measure of deregulation, would effectively destroy regulation of the railroads by the Interstate Commerce Commission.

Returning to your prior question, if I may, I believe the Commission's view is that there is no demonstrable relationship between regulation and increased costs on the one hand or increased charges on the other.

I do not believe the Commission accepts the assumption that if the bargelines were to become regulated in their transportation, that this necessarily would result in increased charges.

Of course, the Commission's position this morning is to permit the status quo to be continued by its proposed amendment.

Mr. DEVINE. Finally, and Mrs. Brown's statement indicates this, assuming the Commission's order is permitted to go into effect on July 1, do you feel this is unfair or discriminatory to any mode of transportation?

Mr. KAHN. On the contrary, Mr. Congressman, I think the Commission believes that this will help restore a measure of equality in regulation.

Mr. DEVINE. That is if the order were permitted to go into effect?

Mr. KAHN. I misunderstood. Under the amendment which the Commission proposes we would achieve that. I am sorry. I misunderstood the question.

Mr. WATSON. Will the gentleman yield?

I am getting over my head here. Under the amendment you want to allow the status quo to continue?

First, are you recommending this amendment?

Mr. KAHN. The Commission's position is to oppose the bulk commodity exemption altogether.

Mr. WATSON. You are recommending this amendment?

Mr. KAHN. As an alternative to the present bills.

Mr. WATSON. You are recommending this amendment?

Mr. KAHN. As an alternative to the present bills. The Commission would prefer having the bulk commodity exemption repealed altogether, I am sure.

Mr. WATSON. That is what we want to try to establish here. What is the Commission's position? Are you recommending this amendment or are you not?

Mrs. BROWN. Actually, the Commission has recommended the repeal of the exemption in the past and as related to this matter which had three bills before, it recommends this alternative.

Mr. WATSON. I agree with you, Madam Chairman, but actually if I understand it correctly, under the proposed amendment, you would prefer that we have nothing, that you go ahead, that this exemption expire, and your proposed regulation go on through. That is what you would prefer.

Mr. KAHN. Right.

Mr. WATSON. Not being able to get that you would recommend this amendment as an alternative. Is that stating correctly your position?

Mrs. BROWN. I think that is correct.

Mr. WATSON. Did I understand further under your proposed amendment it would allow the combining of the bulk or the exempt and the nonexempt commodities without all becoming subject to regulation? Is that basically on the commodities, but it does nothing so far as the matter of the change as to the one vessel or the multivessels being considered one vessel? It doesn't address itself to that question at all. You would still be restricted whether you had 100 barges and several tow vessels or what have you? They would still be limited to the three bulk commodities?

Mr. KAHN. That is correct.

Mr. WATSON. That is what we are trying to arrive at. I am just trying to get an understanding of what your position is.

Mr. KAHN. But the mixture then of the three bulk commodities, the 13 barges that the Congressman was talking about, with the 13 nonbulk commodities barges would not destroy the bulk exemption.

Mr. WATSON. In your alternative here in recommending that we allow the exempt and the nonexempt to be combined without all coming under the purview of the certificated carriers or what have you, the regulations, you think that that would still be fair as related to the railroads?

Would you recommend the same exemption to them that they could mix the bulk?

You said earlier you were concerned about the inequities existing.

Mr. KAHN. I am sure we have not thought through how a comparably worded exemption might be made available to the railroads. I think the Commission's view is, that the present situation has obtained at least since 1955-59, and the continuation of that competitive relationship by the enactment of our alternative would not, therefore, disrupt the competitive relationships between the barge lines and the railroads.

Mrs. BROWN. It does represent what is being done today.

Mr. FRIEDEL. I made a statement last year and the year before that, pointing out the need to have an all-mode comprehensive transportation bill.

When Mr. Harris was chairman he recommended that sort of bill. I understand Congressman Pickle has a bill that would take in all modes of transportation in one bill.

We want to try to get all modes of transportation in the same bill, so we can avoid a situation where one mode is hampered by giving the other one a greater benefit. We would like to bring them all into competition so the shippers would benefit.

Our chairman of the full committee, Mr. Staggers, is here. I would like to know if he wishes to add anything or say anything?

Mr. STAGGERS. No, thank you, Mr. Chairman. I do not. But I want to say we welcome Mrs. Brown, a fellow West Virginian to the committee. We are glad to have you with us and to have your testimony.

Mrs. BROWN. Thank you.

Mr. STAGGERS. I think it will be quite helpful to the committee in making up their minds as to what they should do. Of course I am sure they are going to hear from a lot of other people.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Dingell?

Mr. DINGELL. Madam Chairman, your suggested substitute—I have raised a question earlier—doesn't this go further than merely overruling the Mississippi Valley ruling?

Mrs. BROWN. I can simply say to you that it wasn't our intention. Our intention certainly was to take the Mississippi Valley case and to turn it around and this legislation cure it.

But you may have a point in regard to it. I would like for you to tell us, if you would.

Mr. DINGELL. I got over into this question before.

Doesn't it also overrule the *American Barge* and the *Commercial Transport* decisions?

Mrs. BROWN. Mr. Kahn?

Mr. KAHN. It has been some time since I read these. But it was my understanding that the earlier cases represented towage by the exempt carrier rather than by the regulated carrier.

Since our amendment refers to towage by the regulated carrier, we do not feel that the amendment would disturb the earlier decisions.

Mr. DINGELL. Can't you tell us what the *Mississippi Valley* case did that had not been covered by the earlier decisions?

Mr. KAHN. Easily. The Commission in its 1941 administrative ruling first announced that water carriers claiming the exemption cannot transport both bulk and nonbulk commodities in freighting service.

Next, in the *American Barge Line* proceeding before the Interstate Commerce Commission, 294 I.C.C. 796, a 1955 report, the Commission held that the exemption would not obtain where the water carrier claiming the exemption transports nonbulk commodities in freighting service and bulk commodities in towing service.

Third, in a 1957 report in *Commercial Transport Corp.*, 300 I.C.C. 66, sustained in *Commerce Barge Line, Inc. v. United States*, 166 F. Supp. 876, affirmed per curiam by the Supreme Court, at 399 U.S. 342, 1959, the Commission said that the exemption did not obtain

where the water carrier claiming the exemption transports bulk commodities in affreighting service and the nonbulk commodities in towing service.

The reverse situation, which the industry attempted then and sought to obtain from the Commission a ruling to validate and that is the *Mississippi Valley* case decided by the Commission in 1960.

There the Commission said the converse situation was not within the exemption where the water carrier claiming the exemption transports the bulk commodities in affreighting service and engages a regulated carrier transporting nonbulk commodities to tow the bulk commodities for all or a portion of the voyage.

It is this last situation; namely, the transportation in towage service by a regulated carrier transporting nonbulk commodities of tows of bulk commodities which would be validated by the alternative that the Commission has proposed this morning.

Mr. DINGELL. I want to say, Mr. Chairman, that I would like to have permission to pursue this by letter with the Commission. Although your answer is most pervasive, I must confess that it causes me some problems. (See p. 89.)

Let me ask you if you please, Madam Chairman, just exactly what evil is going to befall the bargelines that have been operating under the exemptions here, if this action is not taken legislatively by the committee and if we let the law as we now understand it to be, go into effect free from the change that has been proposed by the Commission.

Mrs. BROWN. As I attempted a while ago, and probably didn't make it plain, the effective date of July 1 would be the effect of the *Mississippi Valley* case which is the three commodities.

Mr. DINGELL. So when they are carrying more than three commodities they will have to be regulated.

Mrs. BROWN. And the entire journey, as I understand it, which has the mixed commodity exempt and nonexempt will have to file tariffs for.

Mr. DINGELL. What is wrong with them filing tariffs? I am curious to know. What economic hardship is going to be occasioned by this? What jeopardy to the public interest will transpire by this? How will the consumers of the country be prejudiced?

Mrs. BROWN. Probably there is a difference of opinion about this because many say that it will cost the consumers more. Actually, what the best we can tell, or the best that would appear is that there is a level of rates now.

Mr. DINGELL. Wouldn't it be fair to assume this level of rates is going to continue?

Mrs. BROWN. I would think so. I think that this is a level there that evidently is reasonable.

Mr. KAHN. I was going to add to the chairman's response that an obvious effect of enforcing the law as it appears on the books in effect overturning the stay of W-C-5 of the *Mississippi* case, would be to impede somewhat the regulated bargelines' ability to compete with the nonregulated bulk bargelines.

Mr. DINGELL. Would impede the power of the regulated to compete with the unregulated? Wouldn't it be the other way around?

Mr. KAHN. No, I think not, since at the present time, Mr. Congressman, the regulated bargelines are freely using their nonregulated affiliates for the affreightment of bulk commodities. They enter into contract rates negotiated with the shipper.

If the law were enforced as presently written, and these contracts of affreightment would be invalid, the affreightment arrangements would have to be pursuant to published tariffs.

At the same time, the bulk carriers on the rivers would be able to continue to solicit traffic at whatever rates they will.

Mr. DINGELL. What is wrong with having the regulated carriers operating through their unregulated affiliates to submit filings of rates? How will they be prejudiced if they do so?

Mr. KAHN. Of course the Commission's response is that we see benefit, no harm certainly, in regulation. That is why we advocate the repeal of the bulk commodity exemption altogether.

Mr. ADAMS. Would the gentleman yield so I can find out what he means by regulated?

Mr. DINGELL. Yes.

Mr. ADAMS. Would this also require in addition to the publishing of rates that each of the carriers that are regulated that presently have a nonregulated affiliate, would that nonregulated affiliate have to get then a certificate of convenience and necessity for wherever it might operate and go through hearings to do so, and if so, what do those hearings involve in front of you?

In other words, could people come in and stop them?

Mr. KAHN. Do you mean if the law, as it is presently written, were enforced?

Mr. ADAMS. Yes.

Mr. KAHN. It would be a simple matter for the regulated barge lines to affreight that traffic themselves. They would not have to go through a device of an affiliate.

Mr. ADAMS. Would they have to extend their certificate of convenience and necessity or do they have areas?

Mr. KAHN. Of course they would be limited by their existing certificates. I think you will find, and they are quite broad in their terms—

Mr. ADAMS. You mean that they have already got the certificates where they have got the regulated and nonregulated? What Mr. Dingell is getting at, let's take up river.

Mr. KAHN. Yes.

Mr. ADAMS. They have got both a certificate that allows them to carry regulated goods and then they will have this nonregulated affiliate running along side of it?

Mr. KAHN. Right on top of it.

Mr. ADAMS. Thank you.

Mr. DINGELL. Actually, aren't they also utilizing these unregulated affiliates for purposes of carrying significant amounts or numbers of barges and a rather substantial amount of goods under section 302 (f)?

Mr. KAHN. 302 (f). The towing exemption?

Mr. DINGELL. Yes, whether they can tow somebody else free of regulation.

Mr. KAHN. So long as that towage is performed for a regulated carrier.

Mr. DINGELL. Isn't that situation going to be overturned?

Mr. KAHN. No, it is not.

Mr. DINGELL. It will not be overturned?

Mr. KAHN. No, sir.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

As I understand the contention of the proponents of this legislation it is that it will maintain the status quo. Your position is that it will enlarge the authority of the water carriers. Is that not correct?

Mr. KAHN. Very substantially.

Mr. WATSON. Substantially?

Mr. KAHN. Yes, sir.

Mr. WATSON. So the contention on the part of some of maintaining the status quo in your judgment is not a valid statement?

Mr. KAHN. Yes, sir.

Mr. WATSON. As I understand, your amendment would maintain the status quo?

Mr. KAHN. Yes, sir.

Mr. WATSON. Have you presented your amendment to any of the carriers, whether water or rail or trucking?

Mr. KAHN. It is my understanding that this language arose from consideration on the Senate side in the 87th Congress of S. 2491. The language is not new, Mr. Congressman.

Mr. WATSON. You or the chairman expressed concern, and we are concerned, about the inequities of the situation should this legislation pass. With your amendment, should it pass, would there still be inequities or would you think all modes would be treated equally so far as possible?

Mr. KAHN. Certainly there will continue to be inequities just as there are inequities as a result of the bulk commodities exemption to begin with.

Mr. WATSON. Yes.

Mr. KAHN. We would be righting it somewhat and certainly more so than the bills before the committee would.

Mr. WATSON. I have one final question: Actually you are not recommending your amendment. It is just a compromised position.

In other words, if the Congress or this committee feels so disposed to act favorably on these bills, then you would say, "Don't do it, at least go just this far and no further than that."

Mrs. BROWN. That is right.

Mr. FRIEDEL. Thank you, Mr. Pickle.

Mr. PICKLE. The exemption granted the barges 30 years ago, I assume, was to help the barge in competition with other commodities, primarily to give them an advantage and to help move freight along these rivers and to help make their operations more competitive.

I assume that as the years have gone by, and with modernization of equipment and a desire to do away with the single tow regulation and in keeping with national transportation policies, you feel that you have reached a point now where the exemption is no longer needed or

that in effect competition is so keen now that it would be better to have no exemption.

Is that generally your feeling?

Mrs. BROWN. That generally has been our position for some time.

Mr. PICKLE. The amendment that you have offered, did I understand you to say that this would or would not apply to the railroads?

Mrs. BROWN. Would not apply.

Mr. PICKLE. This may be a question I have not thoroughly thought out, but if it would not apply to the railroads, why did any of you want to do away with the exemption to make the competition the same and yet you would give the exemption to the barges but not to the railroads in this case in your amendment, that is.

Mrs. BROWN. The amendment is directed to the matter, say, presently before us. I think the broader question or consideration, as the chairman said a while ago, is a lot in regard to the overall look at all transportation.

Mr. PICKLE. Would the counsel care to comment?

Mr. KAHN. As we responded to Congressman Watson, the Commission's position is that the bulk commodity exemption should be repealed. If, however, it is the view of this committee that legislation is required to maintain the status quo, then we submit that the bills before you do not accomplish this and they go beyond the status quo, that our alternative would permit the status quo to be continued.

Mr. PICKLE. Is it your feeling that if we just renewed the present law, that would not maintain the status quo in view of the recent decisions and that we need new legislation as you have proposed?

Mr. FRIEDEL. You say the Commission would unanimously approve the language in the proposed amendment?

Mrs. BROWN. That is right. This is the Commission's statement.

Mr. FRIEDEL. Unanimous approval?

Mrs. BROWN. Yes. It is, sir.

Mr. KAHN. In response to the question posed by Mr. Pickle, if the committee were to do nothing and the Congress were to do nothing and the Commission were to enforce the law as presently written, the bulk commodity exemption would still obtain and therefore it is the Commission's view to achieve overall equality, a further action, to wit, the repeal of the bulk commodity exemption, would be required.

Mr. PICKLE. That is all, Mr. Chairman.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

I first want to go to the point of your equating railroads with bargelines. You don't take the position, do you, that railroad competition in the movement of bulk commodities is qualitatively related to bulk movement of commodities by bargelines, do you?

Mr. KAHN. Qualitative is a very dangerous word.

Mr. ADAMS. I will make it nice and simple. The railroads have a bulk commodity monopoly over all areas of the country that can't be reached by a water route, do they not?

Mr. KAHN. I can't accept that, Mr. Congressman, because there is too much joint line transportation.

Mr. ADAMS. How are you going to get your goods out of the Montana area, out of the Dakotas, Colorado, Nebraska, all these areas

that can't be reached by water? You can't carry them in trucks because they are bulk commodities. You basically carry them by rail, don't you?

Mr. KAHN. But the rivers are reaching back into the land, how many miles I don't know, 200, 300, and 400, and very effectively competing in joint line movements.

Mr. ADAMS. In other words, you say that you could reach with bargelines, and I hope, Mr. Chairman, we will have somebody in to analyze this situation for us, because I remember in the last set of hearings there was a definite qualitative between regulation of bulk commodities on the railroads where they have basically monopoly situations and regulations of bulk commodities on the rivers where we don't have a monopoly. At least I don't know of a single one that can't be reached by competition of the railroads if they want to do it.

Mr. KAHN. I would not limit the competition that the railroads encounter from the bargelines to river points because I think realistically Mr. Congressman, you must add to the river points distances that can be covered by exempt truck transportation and by rail transportation and thus permit the bargelines in combination with trucks and in combination with rails to effectively compete even at nonriver points.

Mr. FRIEDEL. Will the gentleman yield?

You state, Madam Chairman, on page 5, the last paragraph:

Since the railroads which are the water carriers principal competitors for bulk commodity traffic have always been subject to full economic regulations 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.

Mrs. BROWN. I don't think there has been any doubt as far as being a principal competitor—the railroad—of water carriers.

Mr. ADAMS. This is the point I am trying to get some information on, some factual information, as to whether or not qualitatively these two modes compete.

We had testimony the last time that railroads cannot compete point to point along a river with most of the very heavy bulk commodities because they don't have the space and it is more expensive to carry them and so on.

Just the same, the bargelines cannot compete with the railroads on inland transportation because of the very problem of loading and unloading bulk commodities between trucks and barges and so on. It just isn't economically feasible.

Mrs. BROWN. There are advantages to both. I guess that is the reason that we need all modes of transportation.

Mr. ADAMS. That is right. If we get to that point, I want to get to what the mixing rule really originally and your present basic regulatory scheme is meant to accomplish.

Was it originally established, as Mr. Pickle or one of the other gentlemen mentioned, to give an economic advantage to the barge lines or was it just simply that you picked a point in 1939 and bulk commodity definition at that point to say, "Well, it isn't a good thing for health or some other fashion to put together more than a certain number of bulk commodities on any one vessel."

Isn't it just historical?

Mrs. BROWN. I think the history of the mixing rule certainly shows the historic part of it, which was as I understood it in reading the history of it what Congressman Pickle stated.

Mr. ADAMS. In other words, it was to give an economic benefit to the barge lines as opposed to a different—

Mrs. BROWN. An exemption always starts for a reason and as I understood it, from reading the history, that that is the history of the exemption.

Mr. DINGELL. Would you yield?

Mr. ADAMS. Just a second and let me follow. On the definition of bulk, you haven't mentioned anything about it, but is it the Commission's position that if this amendment that you have suggested be adopted that we leave the same definition of bulk or that we modernize it and recognize what modern bulk materials really are.

Mrs. BROWN. We didn't address ourselves to that. We didn't recommend any change in a new definition of bulk as of today.

Mr. ADAMS. Were you opposed to it?

Mrs. BROWN. I can't tell you that we were opposed to it, no.

Mr. ADAMS. I gather from your testimony and that you used to ship a lot of things nonbulk, and now you ship those in bulk. I am just asking do you think we should modernize to a modern definition of bulk or leave it alone? The bill suggests we modernize. Yours is simply silent. I just wanted to know if you had a position.

Mrs. BROWN. Actually I will have to tell you that the Commission went this far with this statement as such. It didn't address itself to that. I don't think I could tell you that they are opposed to it because it isn't addressed to that at this time.

Mr. DINGELL. Wouldn't changing the definition of bulk here tend to place the regulated water carriers, barge operators, in a more disadvantageous position with regard to the unregulated carriers than they would find themselves in if we didn't do so?

Mrs. BROWN. Mr. Prawde?

Mr. PRAWDE. As I understand your question, if the amendment does not remove the parenthetical phrase which defines the bulk commodity, would it place an advantage with the regulated carriers as opposed to the unregulated?

Mr. DINGELL. No. If we failed to remove that parenthetical phrase?

Mr. PRAWDE. It would definitely be to the advantage of the regulated carriers because they could carry it. There would be a question that we have been confronted with one several commodities as to whether it was the custom paid or not.

Many of them are clearly new commodities. But some of them have been refined, reprocessed, but they are still somewhat in bulk and the question has come up as to whether the newly processed commodity which is still the same commodity comes within the definition or not.

Mr. DINGELL. To put this question very simply: If we remove the parenthetical phrase, it will favor the unregulated carriers?

Mr. PRAWDE. Yes, sir.

Mr. ADAMS. I wanted to know what would happen if we were not to pass any of these bills. This will leave the law as the cases have defined it. Would this, then, require all of the noncertificated bulk carriers to obtain certificates of convenience and necessity and go through

a hearing process before you, and if so, is that an adversary process so that these people might be knocked out?

Mr. KAHN. Insofar as the nonregulated bargelines continue to transport no more than three bulk commodities in a flotilla, there would be no requirement upon them to obtain a certificate. If, however, they planned to mix bulk with nonbulk, they would have to apply for a certificate which would then be an evidentiary-type hearing before the agency.

Mr. ADAMS. Do your certificates of convenience and necessity run point to point or areawise for barge lines?

Mr. KAHN. Both.

Mr. ADAMS. Both?

Mrs. BROWN. Yes; both.

Mr. ADAMS. How do you determine who gets area and who gets points?

Mrs. BROWN. On the record.

Mr. ADAMS. Just by what they asked for?

Mrs. BROWN. We don't always give them what they ask for.

Mr. ADAMS. I will try it once more.

Mr. KAHN. The Commission's determination is made upon the record and its discernment of where the public interest lies.

Mr. ADAMS. What I am getting at and this gets to the point Mr. Dingell raises—I don't know whether we are going to be in agreement or opposition on this point—one of the problems that you run into when you extend regulations is the difficulties encountered by the people that are in the business of either getting permission to operate at all—in other words, you in effect establish a monopoly for those who have the certificate—and the second thing that happens at that point is that if somebody opposes them, unless you have got a grandfather clause, whoever was in business may be put out of business.

The degree of difficulty of the regulation often depends upon whether you are operating point to point or areawide. In other words, if you had areawide designations where people could go any place on this river and everybody were blanketed in under it, then I could see the regulation might not be too burdensome.

But, if you have one or two lines going point to point and somebody has got an exempt line going between those two points, and you put in what you said you favor, and the man who doesn't have the original certificate, even though he has had a big business, is going to be opposed when he tries to pick up the certificate from point to point and he is going to be out and the public is going to have a higher price.

Mrs. BROWN. For the most part, Congressman, in a determination of certificates for public convenience and necessity, the proof that comes in is often determinative of how something is established or viewed.

At the Commission—I think the cases will show through many years not particularly in water carriers—but the cases of the Commission will show a time when it is point to point authority and a time where it is radial authority, but the Commission as such does not have anything set as far as whether you use one or the other.

But the degree of proof or what is shown in there after you have heard a case, worked a case, seems apparent what is best for that case by what the need or the proof is, the need with the proof.

Mr. ADAMS. What about free entry without a certificate?

Mr. KAHN. Mr. Congressman, I think your concern about the future under regulations of barge lines now obtaining the benefit of our stay of enforcement, the Commission's stay of enforcement, of the W-C-5 decision, may be unwarranted. W-C-5 involved only certificated carriers affreightment of bulk commodities through their noncertificated affiliates.

The bulk carriers on the river have never been able to transport more than three bulk commodities. Therefore, the enforcement of the law as to these would not bring about any change.

Mr. ADAMS. Under your amendment?

Mr. KAHN. No, sir. If we were to enforce the law as presently written as to the bulk carriers.

Mr. ADAMS. It wouldn't change the bulk commodity carriers. I see.

Mr. DINGELL. I would like to ask a question.

You indicate that this bill is going to change nothing with regard to the unregulated carriers then?

Mr. KAHN. Which bill, sir?

Mr. DINGELL. H.R. 8376.

Mr. KAHN. The bills before you would greatly enlarge the operations that the exempt carriers could perform since it would eliminate the present restrictions on them that they can transport only three bulk commodities in a flotilla.

Mr. DINGELL. Your suggested amendment would not allow this?

Mr. KAHN. That is correct.

Mr. DINGELL. You had just said something in response to a question from Mr. Adams dealing with the question of certification. You said that the unregulated bulk carriers, could not at this time carry more than three commodities in a tow.

Mr. KAHN. Yes, sir.

Mr. DINGELL. Mr. Adams was questioning you as to whether or not those particular individuals would have to come in for a certificate of convenience and necessity if legislation of the sort proposed doesn't gain approval.

Then, as I understand it, Mr. Adams was asking you questions dealing with this same set of circumstances, if your proposed amendment goes through. If your proposed amendment goes through will the unregulated bulk carriers be compelled to come forward and seek certificates of convenience and necessity?

Mr. KAHN. No, sir.

Mr. DINGELL. They will not?

Mr. KAHN. No, sir.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. I know that the House is now in session, Mr. Chairman. I don't want to prolong the hearing.

But I want to ask Mrs. Brown if the Commission has proposed this amendment previously. Is this a new proposal that you have submitted to our committee?

Mrs. BROWN. Yes.

Mr. PICKLE. I appreciate your doing it, because we have been trying to get a position of the ICC on this matter. I am glad you have come

forward with this amendment. I want to study it. It is awfully easy for some of us who are not attorneys to get mixed up in this jungle of legalistic language because it does get involved.

We really boil down to a question of competition and whether the exemption which was granted years ago to perhaps give advantage to the barges should now be removed so that competition would be more on an even basis.

I would assume again that you are saying that just as we have to recognize that in 1969 you do move a lot of commodities in modern barges and containers and tanks and that perhaps some of these old definitions should be removed to recognize the facts of life as transportation is known today.

Mrs. BROWN. They are different in 1969.

Mr. PICKLE. Just as that has changed I assume also that you are saying that the competition between, say, barges and rails, and rails and other modes have also changed and that the need for the exemption is not as great as it perhaps was considered to be 30 years ago when it was first established.

Mrs. BROWN. That is right.

Mr. PICKLE. That we 2 years ago were told over and over that if you give this exemption to the railroads that a water carrier by comparison could not compete because they simply could not compete against a railroad who had the long haul and who were so gigantic that they could simply reduce rates, it was argued, and the carrier then couldn't compete, the water carrier.

You are saying now, do you and your counsel, that water barges in effect go out not just on the riverfront, but they go out 100, 200, 300, up to 500 miles and that the facts of life in that area have likewise changed and that the need for granting the exemption is not as great today and therefore you think that this type of approach would be more to equate the movement of transportation.

Mrs. BROWN. Right.

Mr. ADAMS. Why then do we have a chronic freight car shortage every single year in the Midwest for the movement of bulk commodities such as grain?

Mr. WATSON. That is easy. I can answer that one. The big railroads and the northern railroads don't buy their cars. Southern railroads have to provide all the cars out there and that is the problem. Excuse me.

Mrs. BROWN. The first case of the Interstate Commerce Commission a long, long time ago, about 80 years ago, was on a freight car shortage. This year, it has been very bad, maybe the worst.

Mr. ADAMS. It gets worse every year, doesn't it? The point that some of us are getting at is maybe we ought to loosen up and let the barge-lines use their increased technology to pick up the slack in some of these areas and free up a few freight cars to go elsewhere under your car service orders which will correct the situation that Mr. Watson referred to. Maybe shouldn't we do that?

Mrs. BROWN. I have taken an attitude myself for a long time that anything we could do to help the freight car situation even one car would be very helpful.

However, the freight car shortage proposition is a long historical matter, too, and knowing where these freight cars are and how much is in them is a great part of it—utilization.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman. We won't pursue this much further. But I was just wondering from Mr. Prawde if he has any difficulty with the interpretation of the language in accordance with existing custom of the trade.

Mr. PRAWDE. Considerable.

Mr. WATSON. Has it resulted in considerable litigation?

Mr. PRAWDE. Two primary cases, one on alumina and another scrap iron.

Mr. WATSON. What has been the general attitude of the court, rather liberally interpreting bulk or being rather restricted?

Mr. PRAWDE. I would say restrictive within the language of the act.

Mr. WATSON. Relating it to June 1, 1939. Of course, I was not here at that time. Was that around the date of the passage of this act?

Mr. PRAWDE. Yes, sir.

Mr. WATSON. You mentioned, and I can see where problems would arise, earlier that things were sent in containers, packages, such as chemicals and sugar and now they are sent in bulk. What is the attitude now? Are they still listing as nonexempt or are they categorized as bulk?

Mr. PRAWDE. Where they have not gone to court, sir, we are still in doubt in some respects.

Mr. WATSON. They are obviously shipping it now. How do you classify it? What is the Commission's attitude?

Mr. PRAWDE. Refined sugar we consider was not shipped in bulk in 1939 and it is a regulated commodity.

Mr. WATSON. Chemicals, you didn't have a lot of the chemicals that they are now shipping. What has been the general feeling or attitude of the Commission there?

Mr. PRAWDE. It is a matter of determining each commodity as to origin and whether it was shipped originally.

In the Bureau we took a rather stern, informal view that it had to be the custom of the trade by water. But the *Alumina* case a few years ago construed the language to mean customers paid by any mode. So that loosened it up some.

While the Commission hasn't taken any stand on it, it would appear that personally it would be well to change the legislation to remove so much doubt as to so many commodities today.

Mr. WATSON. Thank you very much, Mr. Chairman. That is all.

But you know earlier the comment I made about the freight car shortage, Madam Chairman, although we had a little humor, there is a lot more truth in that statement that I made than humor, is there not?

Mrs. BROWN. I really don't think anything is humorous about the freight car shortage.

Mr. WATSON. But the matter of the Southern and Seaboard Coastline and others, we provided more than our share and others do not provide their share. There is a lot of truth in that statement, isn't there?

Mrs. BROWN. I have examined the different systems and the big railroads have and are developing day to day fine computerized systems so that they know from which they talk.

Mr. WATSON. They are developing but still they are not up with the Southern and the computerized system.

Mrs. BROWN. The Southern has a fine computerized system and other railroads have, too, so they know what they are doing.

Mr. WATSON. We are trying to set the pace for the industry and we hope they will follow our lead down South.

Mr. DINGELL. Could you tell us what would be the effect on the railroads if H.R. 8376 or H.R. 8298 is passed and what would be the effect on the railroads if the suggested language in the statement of ICC is adopted?

It is an awfully hard question.

Mrs. BROWN. I am going to ask Mr. Kahn to respond.

Mr. KAHN. I think there is no question that insofar as the bills before you would broaden the scope of the exemption, that the competitive effect would be felt more keenly by the railroads than if the Commission's alternative were enacted.

Mr. DINGELL. Has the Commission considered this point in any degree or could you give us any statement as to quality of quantity?

Mr. KAHN. I think this prompted the Commission's alternative suggestion.

Mr. DINGELL. This is the thing that troubles me—is the Commission able to tell the committee this morning precisely what the effect of adoption of any of the three proposals that we have before us would be on the railroads and other modes of transportation?

Mr. KAHN. In terms of ton-miles, I think the answer would be, no, we could not.

Mr. DINGELL. Could we infer that it would be significant?

Mr. KAHN. Yes.

Mr. DINGELL. It would be significant?

Mr. KAHN. Yes, sir.

Mr. DINGELL. Could you give us any offhand statement as to the order of magnitude that this would be in tons or ton-miles? You have indicated it would be significant.

Mrs. BROWN. I don't have any figures, Congressman.

Mr. DINGELL. Do you think this should be a matter that should be considered by this committee, the effect, the significant effect, on competing modes?

Mr. KAHN. If figures were available, they would certainly be of aid in the committee's deliberations. But I would not like to suggest that we can supply such figures since I do not know that they are attainable. We are talking now about the increased transportation on the rivers by the bulk carriers who heretofore have been restricted to three bulk commodities who now under the bills before you would be able to transport any number of bulk commodities in a single flotilla.

Mr. DINGELL. So as you have indicated on a tow of say 20 barges they would be able to go up to 60 commodities.

Mr. KAHN. Yes, sir.

Mr. DINGELL. For all intents and purposes there is no limit on the variety of cargo.

Mr. KAHN. Yes.

Mr. DINGELL. In other words, as a realistic judgment we would not expect that they would wind up with as many as 60 commodities on a 20 tow flotilla.

Mr. KAHN. That is correct. I can't name 60 commodities.

Mr. DINGELL. So for all intents and purposes we would be affording them a tremendous competitive advantage both with regard to railroads and with regard to the regulated carriers on the waterways.

Mr. KAHN. I should think so; yes, sir.

Mr. FRIEDEL. I want to thank you, Madam Chairman.

Mrs. BROWN. Thank you very much. It was our privilege to be here.

Mr. FRIEDEL. The committee will meet promptly at 2 o'clock this afternoon. We have several witnesses to hear. I know it is going to be very interesting to hear from the American Commercial Lines and the Dravo Corp., Dr. Karl Ruppenthal and Mr. Mechling.

The committee is now recessed until 2 o'clock.

(Whereupon, at 12:23 p.m., the subcommittee recessed to reconvene at 2 p.m., the same day.)

AFTER RECESS

The subcommittee reconvened at 2 p.m., Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The meeting will now come to order.

We have as our first witness this afternoon, Congressman Lee H. Hamilton, of Indiana. Welcome, sir, proceed as you see fit.

STATEMENT OF HON. LEE H. HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Mr. Chairman, I appreciate this opportunity to appear before you to support the prompt passage of H.R. 8298, H.R. 8376, and H.R. 8509. The State of Indiana has officially endorsed this proposal to modernize the so-called dry-bulk exemption, section 303 (b) of the Interstate Commerce Act.

In my district along the Ohio River is the largest inland river shipyard. I am personally familiar with the remarkable advances in engineering which have taken place in the last 15 years as large and more efficient towboats have been built at Jeffboat, in Jeffersonville, Ind. The latest boats are capable of pushing up to 40,000 tons of cargo in a single flotilla.

For many years now the river industry has been threatened with the application of an interpretation of section 303(b) which would have the effect of canceling out all the technological advance so painfully and carefully developed by such inland shipyards as Jeffboat.

I think it is fair to say that no one wants to see this obsolete law applied because no one wants to see artificial cost increases imposed on any mode of transportation. In a time when everything we buy has been increasing in cost, it is refreshing to find one significant segment of the economy—the barge industry—able to achieve reductions in average rates.

The ICC has postponed the effective date of its order three times, twice by unanimous request of the House Interstate and Foreign Com-

merce Committee and the Senate Committee on Commerce. The time has come for action.

The facts have been most carefully developed and seem to me to warrant action. I have seldom seen such widespread support—industrial, agricultural, and labor support—for any measure as has developed behind this simple technical improvement of an obsolete law.

I am told that some believe we must hold up action on this bill until other reforms in the transportation industry are developed. I have no objection—and no one else will have any objection—to other reforms being made when the need for them has been fully demonstrated. But it does not make sense to me to hold up a completely meritorious measure in the public interest until all changes are made at once. The need for this bill has been demonstrated. I came here to say that we need it in Indiana and I hope it can be passed in time to meet the ICC's deadline of July 1.

Thank you again for the opportunity of presenting my statement to the committee.

Mr. FRIEDEL. Thank you for your very fine, though brief, statement.

Are there any questions? If not, then thank you again Mr. Hamilton.

I have two letters, one from Shipbuilders' Council of America and the other from the Houston Port Bureau, and I would like to have their statements made a part of the record at this point.

(The letters referred to follow:)

SHIPBUILDERS COUNCIL OF AMERICA.

Washintogn, D.C., May 14, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The private shipbuilding industry of the United States has a vital interest in HR-8298, HR-8376 and HR-8509 which would amend Section 303(b) of the Interstate Commerce Act to permit cargo mixing. It is our belief the elimination of the outdated and inappropriate mixing restriction would be consistent with the expanding needs of the American people for more adequate transportation and would be compatible with the technological progress taking place in inland and coastal water transportation.

We feel that the proposed statutory clarification could well lead to additional progress in the use of barge systems and other inland waterway cargo-carrying modes, requiring the construction of additional vessels in U.S. private shipyards with consequent increased employment for American workers.

To put the issue in focus, it should be noted that in addition to building naval vessels and large merchant vessels of 2,000 tons and over, our shipyards depend also on the construction of thousands of self-propelled vessels in the smaller categories and on non-self-propelled vessels and water craft of all sizes to operate on the inland waterways and in coastal waters. Some idea of the volume of shipbuilding in these categories is detailed in the attached table which covers vessel deliveries for the 10-year period 1958-1967.

It will be noted that in 1967 deliveries of barges and of the smaller self-propelled vessels reached almost 1,600 units totaling over 1.1 million gross tons. This compares with a total of 906 of 740,000 gross tons delivered ten years earlier in 1958.

We strongly urge early Congressional approval of legislation along the lines of HR-8298, HR-8376 and HR-8509, and request that this communication be made a part of the record of the hearings when the Committee considers these bills.

Cordially,

EDWIN M. HOOD,
President.

* * *

U.S. PRIVATE SHIPYARD DELIVERIES, COMBINED SUMMARIES

(A) NON-SELF-PROPELLED VESSELS OF 400 GROSS TONS AND OVER;

(B) SELF-PROPELLED VESSELS OF 100 TO 2,000 GROSS TONS

Year	Non-self-propelled vessels 400 gross tons and over			Self-propelled vessels 100 to 2,000 gross tons			Total		
	Num- ber	Gross tons	Dead- weight tons	Num- ber	Gross tons	Dead- weight tons	Num- ber	Gross tons	Dead- weight tons
1958-----	889	709,721	1,332,008	117	29,716	44,330	906	739,437	1,376,338
1959-----	807	636,741	1,243,500	125	27,705	38,098	932	664,446	1,281,598
1960-----	585	460,656	851,025	121	27,716	37,390	706	488,832	888,415
1961-----	391	406,544	761,034	137	36,152	43,430	528	442,696	804,464
1962-----	687	566,933	1,022,793	138	24,547	30,730	825	591,480	1,053,523
1963-----	828	900,855	1,319,809	163	29,715	46,960	991	930,570	1,366,769
1964-----	941	820,831	1,518,655	207	40,627	49,520	1,148	861,458	1,568,175
1965-----	1,007	958,875	1,735,900	353	77,060	123,814	1,360	1,035,935	1,859,714
1966-----	988	992,635	1,810,600	459	96,945	138,379	1,447	1,089,580	1,948,979
1967-----	1,035	994,326	1,812,909	562	124,107	157,840	1,597	1,118,433	1,970,749
1968-----	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)

¹ Not available.

HOUSTON PORT BUREAU, INC.,
Houston, Tex., May 14, 1969.

HON. SAMUEL N. FRIEDEL,

Chairman, House Subcommittee on Transportation and Aeronautics, House of Representatives, Washington, D.C.

DEAR SIR: It is my understanding that your Committee will begin hearings on May 20, 1969, on House bills H.R. 8509, H.R. 8376 and H.R. 8398 involving the amendment of Section 303(b) of the Interstate Commerce Act by updating its provisions to provide new mixing rules consistent with the needs of our inland waterways transportation system.

Houston Port Bureau, Inc., a non-profit organization chartered under Texas laws for the purpose of protecting and promoting the movement of waterborne commerce through facilities of the ports it serves, fully supports the proposed amendment of Section 303(b) of the Interstate Commerce Act which we feel is vital to the inland waterways movement of our domestic and foreign products. This Bureau represents the ports of Houston, Galveston and Freeport in traffic and transportation matters, as well as many private terminals and private industries located along and back of the water fronts having a real and substantial interest in the movement of cargo through facilities of these ports.

This area is comprised of a multi-billion dollar industrial complex consisting of large chemical companies, petroleum companies, steel industries, fertilizer manufacturers and many other industries located along the water fronts. These industries have a vital need for low cost water transportation in handling their raw and finished products from and to points located along our vast inland waterway system extending from Brownsville, Texas along the Gulf of Mexico and up our large rivers on which most of the large industrial complexes in the midwestern and eastern parts of the nation are located.

The metropolitan area of Houston, Galveston and Freeport, Texas has a population of in excess of 1,700,000 people, many thousands of whom derive their livelihood from the advantages of low cost water transportation. The vast and growing industrial complex of this area can be attributed largely to this type of transportation and its continued growth depends upon this type of transportation which beyond doubt has played a major role in the development of the nation and its great distribution system over the years.

Section 303(b) of the Interstate Commerce Act dates back many years prior to present-day innovations in the method of transporting goods. Its restrictive provisions prohibit the water carrier from taking full advantage of new technological advances in providing modern economical equipment and power units

capable of efficiently handling large tows which with the ever spiraling cost of operations nowadays are a must if you are to continue to provide an economical cost in service to the needs of industry. The Interstate Commerce Commission itself recognizes this fact. The changes in the Act here sought are no different for this important transportation mode than have been the changes in operating efficiency in other important transportation modes over the past few years. In our short sojourn along this narrow path of life we have seen the old wooden boxcar and the old steam engine of the railroads give way to the up-to-date highly specialized equipment capable of handling many, many thousands of tons of freight more than obtained under the old outmoded and obsolete system, and at savings in operating costs of many millions of dollars which has enabled this mode of transportation to keep freight charges to the shipping public on a most economical level. The same situation has prevailed in the motor carrier industry. We feel that there is no reason or justification for not permitting the barge line operators of this nation the same opportunity to provide the industry of this nation with an up-to-date economical and efficient service which is so vital to its needs.

It is our strong feeling that these bills which seek to correct an outmoded provision of the Interstate Commerce Act are in the best interest of the industry of our area and the nation, and to the general public in receiving low cost transportation in the marketing of goods at the lowest economical level, as well as to our inland waterway carriers in their endeavor to provide a vital up-to-date service.

For these reasons we solicit the support of your Committee in the consideration of these bills, and I will appreciate very much your having this statement of our position entered into the record in your proceedings. I have attached 35 copies which I will appreciate your furnishing to the members of your Committee.

Respectfully submitted,

W. E. FINCHER,
General Manager.

Mr. FRIEDEL. It gives me great pleasure to introduce my colleague, a member of this committee, Mr. Eckhardt, so he can now introduce Mr. Hershey and his group for this meeting.

Mr. Eckhardt.

STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. Mr. Chairman, it gives me great pleasure to introduce Mr. J. W. Hershey, who is from Houston, and from my area, whom I have known a great while, and I know brings a great deal of information and knowledge to this committee, and the group that comes with him, all experienced men in the barging industry, and a very distinguished scholar, Dr. Karl Ruppenthal from the Business School of Stanford University.

Mr. Hershey incidentally is a board chairman of the American Commercial Lines, and he has with him Mr. Louis Struble, the executive vice president of Dravo Corp., and Mr. F. A. Mechling, executive vice president of Mechling Barge Lines.

It gives me great pleasure to introduce these persons, who I am sure will give considerable enlightenment and information to the committee.

Mr. FRIEDEL. All right, Mr. Hershey and your group will you please come forward?

STATEMENTS OF J. W. HERSHEY, CHAIRMAN, AMERICAN COMMERCIAL LINES, HOUSTON, TEX., AND JEFFERSONVILLE, IND., IN BEHALF OF WATER TRANSPORT ASSOCIATION; L. P. STRUBLE, JR., EXECUTIVE VICE PRESIDENT, DRAVO CORP.; F. A. MECHLING, EXECUTIVE VICE PRESIDENT, A. L. MECHLING BARGE LINES, AND ALSO IN BEHALF OF AMERICAN WATERWAY OPERATORS, INC.; AND DR. KARL RUPPENTHAL, DIRECTOR OF TRANSPORTATION MANAGEMENT, STANFORD UNIVERSITY

Mr. HERSHEY. Thank you very much, Mr. Chairman, for the opportunity to present our views here.

We have been before this committee before on the same issue, we were treated very well, and I appreciate from the questioning this morning the fact that your concern is deep in this issue.

I have a prepared statement, which I will file, and with your permission, I will just read extracts from it.

Mr. FRIEDEL. Your full statement will be included in the record.

Mr. HERSHEY. Thank you.

I appear here today in support of H.R. 8298 and its companion bills on behalf of the Water Transport Association, a nonprofit trade group which represents the leading ICC certificated common carrier barge lines, operating on the Mississippi-Ohio River system and the Gulf Intercoastal Canal.

I would also like to say that the water carrier industry does come here today intact, vis-a-vis the unregulated carriers and the regulated carriers. We view this—

Mr. PICKLE. Mr. Chairman, I wonder if the gentleman would yield. I note he does not have but just 10 pages, and it does not appear to be a long statement, I wonder if it would be—I know he is trying to save the committee time but I would like for him to just go ahead and present his entire testimony here, if it is all right with the chair, and with Mr. Hershey.

Mr. HERSHEY. I will be glad to do so, at the pleasure of the committee.

Mr. FRIEDEL. All right.

Mr. HERSHEY. The very heart of our problem is the fact that technological advances in river transportation have outrun the provisions of the so-called dry bulk exemption section 303(b) of the Interstate Commerce Act. In presenting the factual background for the urgent need for the passage of the proposal to modernize section 303(b) I would like to introduce for a brief statement Mr. L. P. Struble, Jr., the executive vice president of the Dravo Corp. of Pittsburgh, a leading innovator of shallow draft equipment. He will describe for you the engineering response for the barge and towboat builders to the insistent demands of the barge operators, responding to pressures from shippers, for more and more efficient equipment capable of maintaining rates at very low levels and fending off the inevitable rise of labor and material costs.

When Mr. Struble has finished I would like to introduce Prof. Karl M. Ruppenthal, of Stanford University's Graduate School of Business, who is accompanied by F. A. Mechling, executive vice president of A. L. Mechling Barge Lines of Joliet, Ill., and chairman of the

legislative committee of the American Waterways Operators of Washington. Dr. Ruppenthal will summarize briefly a study he has made of the impact on the economies of barging which would have resulted if regulated and unregulated commodities had been separated in tows actually operated in 1967.

The principal common carrier barge lines have turned over to Stanford Research Institute complete records of tows operated in 1967, and I believe, Mr. Chairman, that Dr. Ruppenthal's testimony will go far in answering the questions of Congressman Watson this morning.

From these records a factual demonstration of the injury to the public that would result if the relief sought in this legislation is not granted has been made. Mr. Mechling will also make a statement for AWO.

I will now call on Mr. Struble of Pittsburgh.

STATEMENT OF L. P. STRUBLE, JR.

Mr. STRUBLE. Mr. Chairman, with your permission, I would like to brief my statement, and enter the entire document for the record.

Mr. FRIEDEL. Without objection, so ordered.

Mr. STRUBLE. Our company has built over 5,000 hulls for inland river service in the 54 years since our first piece of floating equipment was launched in 1915.

Among our major subsidiaries is the Union Barge Line Corp., which operates on over 6,500 miles of the inland waterways.

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.

We have a map over there, which illustrates it very well. And I would like to relate this development to the year 1940, when domestic water transportation was brought under regulation by the Interstate Commerce Commission.

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.

One of the first improvements was the switch from paddle wheel towboats to propeller-driven towboats.

While several propeller type towboats had been built prior to 1929, they were not generally accepted in the trade.

The 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.

In 1934, the first of the modern type, twin-screw diesel towboats appeared on the Ohio River. Her name was *Peace* and she had 760 horsepower, just about the same power as was employed in the larger size stern wheel towboats of the day.

Mr. FRIEDEL. How many barges are being towed there?

Mr. STRUBLE. It looks to me like about eight, Art, are my bifocals working?

From the Floor. Very well.

Mr. STRUBLE. A third major innovation was the "kort" nozzle, an importation from Germany in 1936. 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 wheel underway.

By strategically locating rudders forward and aft of the nozzles the naval architects developed a towboat which had absolute steering control, forward and backward. The decade of the 1930's was devoted to perfecting these developments and as I pointed out, they were not universally accepted.

The subject of propeller versus stern paddle wheel was argued vigorously at any gathering of river men in those days.

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 drive twin-screw towboats known as DPC's built for the Defense Plant Corporation. 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. 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 a 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.

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 River 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 20 175-by-26-foot barges. Assuming 800 tons per barge, this made a 16,000-ton tow.

Construction began shortly after the war, and by the late 1970's, the replacement program of these 53 locks with 19 locks will be completed. Each dam will have a lock of 110 by 1,200 feet long. Hence a double-locking tow could then consist of 34 barges, of 1,200- to 1,400-ton capacity, or about 40,000 tons.

Mr. FRIEDEL. How many barges are shown in that picture?

Mr. STRUBLE. Art, can you help me on that?

FROM THE FLOOR. I think it is 39.

Mr. STRUBLE. Thirty-nine. We will verify that later, but it is pretty close to 40.

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

Other developments were the short-range radar, which allowed 24-hour operation in fog, rain and snow, depth finders, that helped avoid groundings, swing indicators, highly sensitive indicators of the direction of the tow, were most helpful in steering in fog, and also in high winds.

Automatic pilots made for more efficient steering. Ship-to-ship and ship-to-shore telephones expedited operations. Automated engine rooms improved crew productivity. Bow thrusters expedite hanging of long tows, in sharp bends.

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 barge lines 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 50 and 60 barge tows, loaded to 12-foot depths, will bring new and even greater economies to the commerce of the Nation.

Since 1940, the engineers have created a new technology, which has increased the productivity of inland barge operations many times over. However, the obsolete wording of the 1940 act, unless changed, will cancel out present deficiencies and deter further improvements.

It seems to me, as an engineer, that the public interest requires the application of the most advanced technology to river transportation, when that technology so obviously leads to more economical transportation.

I thank you.

(Mr. Struble's prepared statement follows:)

STATEMENT OF L. P. STRUBLE, JR., EXECUTIVE VICE PRESIDENT, DRAVO CORP.

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 54 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. 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 steamboats which had seen no fundamental, technological changes since the late 1800's. 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 switch current was too much for this type of operation to insure 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. 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.

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 river men. 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 drive twin-screw towboats known as DPC's built for the Defense Plant Corporation. 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. 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 a 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 twenty 175-by 26-foot barges. 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-ton to 1,400-ton capacity, or about 40,000 tons. 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 accompanied by greatly improved steering control are of course the major technological advances, but there have been a number of improvements in barge line 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 in the handling of larger tows. 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 a 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.

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 50-and 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 barge lines are ready to apply it in the public interest. The only roadblock is the obsolete wording of a 1940 act which H.R. 8298 and its identical other bills are designed to remedy.

Since 1940, the engineers have created a new technology which has increased the productivity of inland barge operations many times over. Further improvements are being made and greater economies can be expected as technology advances. However, the obsolete wording of the 1940 act, unless changed, will cancel out present efficiencies and prevent further improvement. It seems to me, as an engineer, that the public interest requires the application of the most advanced technology to rivertransportation, when that technology so obviously leads to more economical transportation.

I thank you Mr. Chairman.

Mr. PICKLE (presiding). Go ahead, Mr. Hershey.

STATEMENT OF J. W. HERSHEY—Resumed

Mr. HERSHEY. We have another exhibit, which I think would perhaps illustrate the impact of what Senator Magnuson has called the archaic and restrictive phrasing of section 303(B) of the Interstate Commerce Act.

Art, can you take down the big picture, and get to our tow there?

What I have done here is to try to illustrate in somewhat abbreviated form a typical tow that may be operated at the present time by one of the common carriers on the Mississippi River. And as the result of the long series of interpretations, which was described fairly well this morning, as a practical matter, at the end of next month, we will have to break up this large volume tow, into separate smaller tows, of

regulated commodities and non-regulated dry-bulk commodities, unless these bills are passed.

We see at the top a tow which would probably have 35,000 to 40,000 tons of cargo in it. It is made up of five dry-bulk commodities, which are illustrated there by the solid colors, and others illustrating regulated commodities, such as paper, steel, sack grain, and things of that kind. In the absence of the remedy as proposed in this bill, on July 1st of this year, we must first remove from that large tow all of the non-bulk, or the regulated commodities, and put them on a separate vessel. After we have done that, we would still not be operating within the law, under the interpretation, and we would have a smaller tow.

At that time, he would have to remove two of the bulk commodities, in order to be within the three-commodity exemption.

So at this point, instead of one large tow, we would have a total of three towboats, three sets of crews, requiring three sets of lockages, for the transportation of the same amount of cargo. The precise financial impact of doing this will be described in a few minutes by Dr. Ruppenthal.

The operating efficiencies resulting from the improved barge technology can be clearly demonstrated. For hearings in the last session, we surveyed the five principal common carrier pioneers of the big towboats: American Commercial Barge Line Co., Federal Barge Lines, A. L. Mechling Barge Lines, the Valley Line, and Union Barge Line Corp., 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. By 1966, the average tow load had risen to 29,600 tons, more than double, with individual tows ranging up to 40,000 tons, or four times the capacity of a Liberty ship, and over 20 times the average railroad trainload. It is somewhat higher now than it was in 1966.

Stated another way, the average towboat in 1955 produced 1,505,000 cargo ton-miles per boat operating day. For the year of the study, 1966, 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 million ton-miles a boat day. The trend to increasing efficiency has continued since then.

This improved productivity has enabled the barge lines 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. Since 1966, the average revenue per ton-mile has declined further until today it is slightly below 3 mills. This is the level of rates charged by the barge lines 50 years ago, in the 1920's. You see here demonstrated a remarkable triumph of technology over the pressures of rising labor and material costs and of inflation.

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. And freight rates will have to be raised.

About 9 percent of the total intercity freight service of the country moves on the Nation's inland waterways, for revenues which represent about half of 1 percent of the total intercity freight bill of the entire economy. The savings of the new technology have significance for every consumer, but especially for shippers of agricultural products, pipe, steel plate, coal, paper, metallic and nonmetallic ores, petroleum, fertilizers, and other commodities which move in large volume and which are adapted to river movement. Unless the barge lines can continue to apply the new technology, these shippers, farmers, 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. All these innovations have the same 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 and facilities, 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—the God-given rivers—is a source of sound growth in the economy, just as formation of new capital for investment is an important source of growth.

Our present difficulty is how to apply modern technology in the public interest in the face of what everyone agrees to be an obsolete phrasing of the dry-bulk exemption. I will not attempt to restate in intricate detail the search of the barge lines for a nonlegislative solution.

Our industry witnesses and the Interstate Commerce Commission recounted all this and answered in full many detailed questions in hearings in the 90th Congress. We would be happy to again supply copies of this testimony for the record. The net of all our attempts to develop a nonlegislative solution was actually a direction from the courts to apply to the Congress for relief.

A decision of the U.S. District Court of the Southern District of Texas in 1966 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 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 produces 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 was affirmed (18 L. Ed. 98, 1967).

The barge lines now come before the Congress with a proposal we believe to be in the public interest.

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 reasonable answer to that question.

The solution is embodied in H.R. 8298 and its companion bills, which are identical with H.R. 7610 and other bills introduced in the last session. 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.

In other words, the large tow which you saw up there originally is considered under 303 (b) as one vessel. Without this sentence, the dry-bulk exemption would have almost, 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 promote technological innovation, encourage lower freight rates, and better transportation service.

For shippers, and consumers, 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 were originally hopeful that there would be no opposition to this bill. The water carrier industry is united behind it. There is no opposition from the airlines, the truckers, the shippers, the farmers. Indeed, there is very broad support from the shippers, farm groups, labor, the communities served by river traffic. During the last Congress the Department of Transportation supported it. We do not know at this time what their attitude is. Justice supported it, and the Department of Agriculture. The ICC has no objection. These groups properly identify our problem as an internal barge line industry problem. The solution here proposed was unanimously approved by the Senate Commerce Committee in the last session.

I am certain that there is not a single argument raised anywhere in the economy, in Government, in industry or anywhere else that controverts the simple fact that the mixing rule proposal before you is

very much in the public interest. It is so much in the public interest that the ICC has postponed its compliance order once on our initiative and twice by unanimous request of the full House and Senate Commerce Committees. There has not been a single objection to these postponements from any segment of the economy. Thus, while we, our shippers, many members of Congress, the courts and the Commission have struggled to arrive at a remedy for the archaic law, there has been unanimous agreement, formally stated by those in authority, time and again, that the public interest requires the continued application of the new technology.

Last year, as this committee stated in its letter to the Commission in asking for a 1-year postponement, there was no time before the end of the session to complete action on the bills then before the committee. Now we have a deadline of July 1 and we hope this issue can be resolved without further delay. Every barge line has before it very difficult investment decisions on the purchase of equipment to meet the expanding demands of the economy. Are we to continue to buy the big towboats and continue the trend to additional economies or are we to seek different and less efficient methods of operation? That is the question we are asked by finance committees within the various companies and which we ask ourselves. Further postponement would therefore simply leave this "sword of Damocles" hanging over our heads and we hope sincerely that the issue can now be settled.

There is no secret about the basic problem with this legislation. We have been unable to persuade the railroads to unblock their opposition. Farmers, shippers, State industrial development departments, labor, ports, and a long list of groups devoted to economic development are unanimously in favor of the bill.

I should say at this point that the Senate Committee on Commerce, faced with the "something for the railroads" plea, resolved the issue by stating in its favorable report that the mixing rule bill should be considered on its own merits and that action should not be postponed to await the accomplishment of all changes at once. That was the recommendation of the Department of Transportation during the last Congress, at that time and it was the recommendation that was adopted.

In the light of the problems and opportunities which lie ahead for the entire transportation industry, I think the negativism represented by this opposition is obsolete. Issues should be decided on their merits and not traded back and forth in disregard of the public interest.

As this committee knows, our time will run out in only 6 weeks. We cannot believe that our many years of technological innovation on the inland rivers, which has so clearly benefited so many, will be discarded on the morning of July 1. When I review the support that has developed for this measure—virtually unanimous from all segments of the economy—and the clear public interest in improved transport productivity, I am impressed by the goodwill the railroads could achieve by unblocking their opposition. We would be the first to see that they got full credit.

I would like, now, if the committee pleases, to introduce Mr. F. A. Mechling, who in turn, at the conclusion of his remarks, will introduce Dr. Ruppenthal.

Mr. PICKLE. Mr. Mechling.

STATEMENT OF F. A. MECHLING

Mr. MECHLING. Mr. Chairman, my name is F. A. Mechling. I am executive vice president of the A. L. Mechling Barge Lines of Joliet, Ill. I appear here in behalf of my company and also in behalf of the American Waterway Operators, Inc., of Washington, D.C.

The American Waterway Operators, made up of barge line operators in various segments of the transportation scene, consisting of regulated common carriers, certified by the Commission, exempt for-hire carriers that operate under section 303(b) and 303(d) of part 3 of the act, and private carriers and some other members, numbering **a little over 200.**

We subscribe as an association to the United Report that has been expressed by Mr. Hershey and Mr. Struble in support of the legislation before this committee.

Those are just the brief remarks that I have, and I will be available for questioning, if anything is desired later, and at this point, in order to review and develop the impact that we discovered by the aspects of the barge-mixing rule, Dr. Karl Ruppenthal, Director of Transportation Management of Stanford University, has some brief remarks to make, in support of his study.

Dr. Ruppenthal.

Mr. PICKLE. You may proceed, Mr. Ruppenthal.

STATEMENT OF DR. KARL RUPPENTHAL

Dr. RUPPENTHAL. Thank you, Mr. Chairman.

I would like to present to you the full study, which we have made, concerning some of the economic impacts of the mixing rule. I would like to present it for the committee's files, and give you a brief summary of what the study has done.

(The study entitled "Some Economic Aspects of the Barge Line Mixing Rule," by Mr. Ruppenthal and Mr. Quirin, may be found in the committee files.)

Dr. RUPPENTHAL. I would like to say at the outset that this is not a partisan study. We have undertaken it in an objective fashion to determine, insofar as we can, the economic impact of the mixing rule on the certified barge lines. In order to make the study, we undertook a simulation. We used data for 1967, the most recent year for which complete data is available.

This data, we took from the barge reports supplied by the barge lines. Using this data, we reconstructed their operations on the lower Mississippi River. That is, from Cairo, Ill., to New Orleans.

From the data, we determined the number of barges that made up each of the tows that these carriers operated on the lower river, together with the commodities hauled in each of the barges. Now after we had reconstructed the actual operations of 1967, we sought to determine how the operations would have been effected, had the mixing rule been in effect, and had the barge operators complied fully with that rule.

Data for this study was supplied by five certified barge lines on their 1967 operations. We selected these carriers because they haul a large percent of all the regulated traffic carried on the lower river,

because they were willing to cooperate in supplying data for the study, and because their data was reasonably in comparable form.

We looked at the lower Mississippi River, because it is a very important artery of commerce, and because the barge operations on that river are not widely dissimilar.

From the barge reports, we determined the number of barges in each tow, and what commodities each of them actually hauled.

Then after reconstructing these operations, the simulation study sought to depict what the situation would have been, had the mixing rule been in effect in 1967, and had the barge operators been unable to haul regulated and bulk—that is, nonregulated—commodities in the same tow.

This study shows that in 1967, these carriers operated a total of 355 tows downstream, and 360 tows upstream. Virtually of these tows consisted of both regulated and bulk commodities. The mixing rule, of course, would not have permitted the tows to operate in this mixed fashion.

This means, of course, that had the mixing rule been in effect, that the operations necessarily would have changed in some fashion.

Our simulation study preceeded on the assumption that had the mixing rule been in effect in 1967, the certified carriers would, nonetheless, have provided the same level of service for the regulated commodities that they actually provided that year. We assume that they would have operated tows consisting of regulated commodities, liquids, and empty barges on precisely the same schedules that they did in fact operate in 1967.

The study next addresses itself to the question of the barges of bulk commodities. Since they could not, under the rule, have been combined with the regulated commodities, the study seeks to determine what would have happened to the barges of bulk goods, had the barge lines been faced with this situation.

There are, of course, a number of courses of action which they might have followed. A barge operator might, for instance, decide that he would operate a tow of bulk barges only if it were sufficiently large to justify the operation. He might decide that if only a small number of barges of bulk commodities were available, that he would forego the traffic which was represented by the small tows.

We have run the simulation through our computer, making two different sets of assumptions. Under the first set of assumptions, we assume that a barge line operator might decide that he would operate a tow of bulk barges only if there were 11 or more of such barges available to operate. And this, in our study, we have termed it 11-barge cut-off decision.

Second, we ran a second simulation, assuming that the barge line operator might decide that if there were seven or more such barges available, he would operate a bulk tow, but if there were fewer than seven, he would not operate the tow. And this, we shall have called the seven-barge cut-off decision.

In both of this simulations, we have assumed that the barge line operator would aggregate together the largest number of barges of bulk commodities which would be available—allowable, rather, under the three-commodity rule. We have simply assumed that he would

operate tows in parallel fashion, one which would be regulated, and the other which would be a bulk tow.

Now the data indicates that in 1967, these carriers hauled a total of 11.34 billion ton-miles of freight on the lower river, of which 7.2 billion ton-miles consisted of bulk commodities. If these carriers had decided to operate only those bulk commodity tows that consisted of seven or more compatible bulk barges, the study indicates that their total ton-miles would have been reduced to 9.6 billion ton-miles, or about 85 percent of the ton-miles actually moved that year.

Instead of moving 7.2 billion ton-miles of bulk commodities, the simulation indicates that they would have moved but 5.55 billion ton-miles of bulk commodities, or about 77 percent of the tonnage of bulk commodities actually moved.

The second part of the simulation indicates that if the barge line operators had elected to follow the seven-barge decision rule, and to operate only those tows consisting of seven or more barges of bulk commodities, their total towboat costs would have increased by about 37 percent, and their towboat costs per ton-mile would have increased by about 60 percent.

Now, if you assume that towboat costs represent about one-third of a barge lines' total costs, then it would appear that the barge operator's total costs would have increased from about 2.3 mills per ton-mile to about 3.02 mills per ton-mile. This is an increase of about 32 percent.

Now if, on the other hand, the barge line operators had elected to operate only those tows of bulk barges that consisted of 11 or more compatible barges, they would have moved a total of 8.08 billion ton-miles of freight, contrasted with the 11.34 billion ton-miles actually moved. This would have meant a reduction in total tonnage of about 29 percent.

Under this situation, they would have moved 3.89 billion ton-miles of bulk commodities, instead of the 7.2 billion ton-miles actually moved, a reduction of some 46 percent.

Here their towboat costs per ton-mile would have been about 1.21 mills, instead of about 0.765. Again, if you can assume that towboat costs represent about one-third of a barge lines' total costs, this would mean that the barge lines' total costs per ton-mile would have been about 3.34 mills, instead of about 2.3 mills, an increase of about 47 percent.

No attempt was made in this study to determine precisely what these increases in costs to the barge lines might have meant in terms of rates. I think it is fairly safe to assume that any transportation company must eventually recover its total costs from the shippers, though I believe it is reasonable to assume that cost increases would eventually be translated into some kind of an increase in barge line rates. And it would therefore appear that the impact of the mixing rule might be a significant change in the rates charged by the certified barge lines.

Thank you.

Mr. HERSHEY. Mr. Chairman, this concludes our direct statements from this group, and I guess you could say we are open for questions.

Mr. PICKLE. Mr. Hershey, we are glad to have your testimony, and the testimony of the gentlemen that you have brought with you.

It has been very interesting and clarifying to me, and I am sure will be helpful to the committee in every respect.

I have a few questions I would like to ask. First, I want to ask Dr. Ruppenthal the question relative to tons shipped, and costs that are involved.

Dr. RUPPENTHAL. Yes, sir.

Mr. PICKLE. You assumed that in the two instances, the 11-barge cutoff, and the seven-barge cutoff, that this would probably be as high, in the first instance, as you would go. That they wouldn't carry more than 11 or 12, if the mixing rule had gone into effect in 1967? You just assumed it wouldn't be any more than that.

Dr. RUPPENTHAL. Our study is based on two assumptions: The first is that if there were 11 or more barges of bulk commodities tendered, the operator would operate the tow of bulk barges. If there were 10 or fewer tendered, that he would abort the tow. He wouldn't operate it. They would be handled in some other fashion. If he had a large number of barges of bulk commodities, he obviously would operate.

Mr. PICKLE. You didn't have any study assuming that there would be 16 barges in a tow.

Dr. RUPPENTHAL. Our study breaks down the actual makeup of each of the tows that did operate in 1967. As a matter of interest, there were a total of 715 tows operated by these carriers on the lower river, and only 23 of these tows had 11 or more barges—excuse me—only 23 had 11 or more barges of bulk commodities.

So this would mean that under the 11-barge cutoff rule, that a relatively small number of bulk barges would have been operated by these carriers, on these schedules.

Mr. PICKLE. In both instances, your testimony is that there would be a considerable lot, a great deal less tonnage shipped, and that the cost would be higher. Cost in the seven-barge cutoff, as much as 32 percent from a cost of 2.3 mills up to 3.02, and, in the other case of the 11-barge cutoff, costs presently, at least in 1967, 2.3 mills, up to 3.4.

And this would represent—you said you would ship approximately 71 percent, or at least 29. I assumed, then that you would only move about 71 percent of as much goods in the 11-barge cutoff, and only about 85 percent of the goods in the seven-barge cutoff. Is that your general testimony?

Dr. RUPPENTHAL. That is all the goods that these carriers would have moved; yes sir. The balance of the traffic would not have operated under this assumption, and would have been a problem to be dealt with in some fashion.

Mr. PICKLE. Well, your testimony is only—it also assumes that the rates would stay the same, and that there would be no other calculation on that.

Dr. RUPPENTHAL. Our study is based on the cost experience that the carriers actually had. We have not dealt with the question of what the rates to the customers would have been.

Rates, as you know, are a complicated matter, and we have not presumed to say precisely what would have been the rate impact on all the various shippers.

Mr. PICKLE. Mr. Hershey had testified that if the relief sought is not granted, that freight rates will have to go up, and I am interested, if this is correct, how much they would go up, and I, therefore, assume that your testimony is that it would go up 30 percent or more?

Dr. RUPPENTHAL. I would say that had these operators elected to operate parallel tows, one consisting of the regulated barges, the other consisting of bulk barges, in complete compliance with the mixing rule, their costs would have gone up by the percentages which I indicated.

Now precisely what this would have done in terms of rates, I am not prepared to say, because rates and costs—

Mr. PICKLE. Can you give us an estimate? You are an expert on this, and you have been studying it. We are interested now in knowing how that relates to costs to the public.

Dr. RUPPENTHAL. My information is that the carriers have not been making tremendously high profits. That is true, I think, in almost all of the transportation industry, not just the barge operators.

This would lead me to believe that any increase in costs must inevitably be reflected in an increase in rates. I don't think that any transportation company is so fat that it can afford to absorb a large increase in costs. The precise magnitude of the reflection, I don't think we can precisely say, but I think it would be significant.

Mr. PICKLE. Do any of the gentlemen at the table care to give me an estimate what these figures that your witness has given us would relate with respect to increased costs?

Mr. HERSHEY. Congressman Pickle, Dr. Ruppenthal did this on a very tight schedule. I haven't seen this report, until 2 or 3 days ago. I have turned it over to my traffic people, and it is a complicated situation, because clearly, if our costs go up as much as 25 or 30 percent, obviously, we can't just have a blanket rate increase of 25 or 30 percent.

There would be a lot of traffic that we simply couldn't move. Faced with the situation where there would be a dramatic rise in costs like this, any prudent operator would have to make an analysis of his entire traffic pattern.

There would be certain types of low-rated bulk traffic, on which initial rates were so low that he very obviously couldn't ever recoup the additional costs.

Dr. Ruppenthal has testified that in a simulation survey, a certain portion of the traffic would simply not move. The portion of traffic that wouldn't move, very likely, would be the lowest rated traffic, so that it is almost impossible to generalize.

In my own mind, speaking only for my own company, I would be very much surprised if even using selectivity in traffic, which we could do with respect to the unregulated portion of our traffic, and even doing a better job, perhaps, than his computers, I can't conceive of any rate relief for less than 10 or 15 percent increase, that would even approach making the carriers whole.

It may well be that Mr. Mechling would care to comment on it. We bargelines are competitive, and he has been very competitive with my company on rates.

Do you want to make any comments, Bud?

Mr. MECHLING. I would just say, I think you have probably set the ceiling.

No; I don't think I could elaborate any more on what Mr. Hershey has said, Congressman. I think he has stated it well, and it would be in the ball park.

Mr. HERSHEY. I think it is just obvious that if we are going to have two towboats, and two sets of crews do the work of one larger towboat, and one larger crew, that the impact on costs and, therefore, the rates would be very, very material.

Mr. PICKLE. I realize, Mr. Hershey, when you estimate, it might be as much as 10 or 15 percent increase, that is a guess, but I know you are knowledgeable in the field. At least it gives the committee a figure that we can contemplate, and try to establish the correctness of it.

Mr. Mechling, this morning, the ICC proposed an amendment to us. Now this was identical to the language in the H.R. 9046, which was introduced back in 1961. At that time, Chairman Murphy of the ICC, at least in the hearings that followed in 1962, said that the bill that was proposed went way beyond the ICC's decision in the Mississippi Valley case.

Now, what is your position as head of the American Waterway Operators, with respect to the proposal that the ICC made this morning?

Mr. MECHLING. Mr. Chairman, I would say that the amendment to the bill that they discussed this morning would only go part way to continuing to maintain the full economic technical advantages that we have advanced so far and that Mr. Struble has described.

We would still be limited, under this proposal, to three dry-bulks in the same tow. This would affect regulated carriers and it also would affect the exempt for-hire carriers. We would still be limited to three in a tow, so that in the example that was shown on the board, we would be unable to move all those dry-bulks in the regulated tow. We would still have to drop some off, so that again would still defeat some of the economics of being able to move all these commodities in the same tow, under this amendment to the law.

Mr. PICKLE. Now are you opposed to the ICC suggested amendment?

Mr. MECHLING. The members of the American Waterway Operators, and the Water Transport Association has spent a couple of years of real diligent effort, trying to find something that the industry itself could get united to support, and do a thorough, complete industry job of supporting this, and also, a direction of amendment that we thought would be in the total public interest, from the standpoint of all the shippers of commodities by water.

And this, I think does it, and I think anything short of what is proposed in this legislation would be undesirable.

Mr. PICKLE. Anything short that is proposed in H.R. 8376 and H.R. 8298?

Mr. MECHLING. Yes.

Mr. PICKLE. I want to return to this point under discussion, but I want to recognize the gentleman from Ohio, Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Just a few brief questions.

I don't believe you were with us last year, Professor.

Dr. RUPPENTHAL. No, sir.

Mr. DEVINE. Mr. Hershey, I think, and Mr. Mechling were here.

Could you demonstrate whether there have been any dramatic changes in your industry since you last appeared?

From an economic standpoint, or a traffic standpoint?

Mr. HERSHEY. I would say, I don't know whether you would call it dramatic, but particularly among the unregulated carriers, who have generally operated smaller tows than the regulated carriers, their orders for new equipment have now been in the realm of towboats of perhaps a thousand or 1,500 horsepower greater than they ordered before.

We are competitive with Mr. Struble's company, Dravo Corp., through shipyards my company owns, we both build boats, and the unrelated carriers were fairly well standardized a year or a year and a half ago, or 5,000 horsepower boats.

They are now ordering 6,500, wouldn't you say?

Mr. STRUBLE. Yes.

Mr. HERSHEY. Some 6,500 horsepower boats, so they, too, are operating larger tows, and they, too, have maintained a freight rate structure which is no higher, and in many instances lower, than it was a year or two ago.

I think that in the face of inflationary trends of the individual cost factors, that this in itself is quite dramatic.

Mr. MECHLING. That is basically true. This is the big field where there have been continuing strides since we appeared here about 2 years ago.

Mr. DEVINE. Well, you anticipated by your moves. Are you kind of betting on the idea that Congress would act?

Mr. MECHLING. Well, it might be blind faith, and merit in what we feel is a just cause, that would indicate, say, the confidence that has been expressed by the investments, as you put it, the common investment that have been made in this new equipment.

Mr. DEVINE. As of this moment, now, there appear to be three alternatives: That we do nothing, and let the ICC rule take effect on July 1, to adopt one or both of these bills, or the ICC counterproposal.

Now I would assume, of course, you would rather have the bills adopted. In the event that didn't occur, rather than doing nothing, I presume that you would prefer the ICC approach, or the amendment, would be more acceptable.

Is that a reasonable assumption?

Mr. HERSHEY. I would say, as an assumption, it is reasonable.

Mr. PICKLE. These are similar to the assumptions that Dr. Ruppenthal has given us earlier.

Mr. DEVINE. One final question, just for information purposes.

How many barges are feasible in a single tow? I mean, you talk about something like 12, something like 15, one has 24, and I think that one picture you showed, you suggested it may be 37 or 39.

I mean, what is the point of no return here?

Mr. HERSHEY. The very large tow which you say, with 39 or 40 barges, would only be feasible at the present time on the lower Mississippi River, which is a broad, unlocked river.

And I believe our company, our operating people would feel that perhaps that approaches the maximum, in the absence of some change or improvement in the physical waterway.

Mr. Struble or Mr. Mechling may have more ambitious ideas than that. I don't know.

Mr. MECHLING. I think that is conservative, Jake.

Mr. PICKLE. Conservative?

Mr. MECHLING. There are tows moving up into the 45-barge tow, and 50, over 50,000 tons of cargo, moving on the lower Mississippi, solid tows of bulk cargoes, so that it is creeping up on Mr. Hershey's conservative figure.

Mr. HERSHEY. Well, a 40-barge tow, about 1,400 tons to a barge, you see, a fully loaded bulk barge, that would be 56,000 tons. This is entirely practical.

Mr. DEVINE. Depends a lot on your bulk load, doesn't it? I mean, cement on one and ping-pong balls on the other would make a lot of difference.

Mr. HERSHEY. Right.

Mr. DEVINE. I believe that is all, Mr. Chairman.

Mr. PICKLE. I want to ask you, Mr. Hershey, or some of you gentlemen, that it is my understanding that the effectiveness of the Commission's order, W.C. 5 followed the supporting court decision, or stayed, first, until January 1, 1968, and then later, until June 30, 1969.

Now whenever that order is effective, the water carriers covered are required to conform their operations and otherwise comply with the terms of the order of the court.

My question is: In your opinion, what would happen, if the Commission's order went into effect?

Mr. HERSHEY. Well, I think that technology of operating under the new rules would have to be developed. I don't think overnight, we have got a plan but I don't think it would be the plan that would finally be adopted. Obviously, the first thing that would happen would be that service would deteriorate.

If we couldn't mix regulated commodities with unregulated commodities, what we would attempt to do, and I think other carriers would try to do, to the limit of the patience of their customers, would be to accumulate solid tows of regulated commodities. This would mean that the service would have to deteriorate, because the frequency of the tow with respect to that particular class of commodity would have to be diminished.

Do you follow me?

Mr. PICKLE. Yes; I think I do, Mr. Hershey.

Mr. HERSHEY. What I mean is that this would be a method by which a shipper could help by giving away, in a sense, some of his service, but this would simply make it less competitive. It would make it less efficient from the standpoint of the shipper, and in the final analysis, I think what we would have to do would be to pretty much do what Dr. Ruppenthal's study indicates.

We would have to mix; we would have to mix legally.

Now we must remember that we still have an intact and pure exemption in the tank vessel exemption. So the tank vessels could be

swung over either to a bulk tow, or could be swung over to a tow of regulated commodities.

Empty barges, I think, are mostly unregulated. There has been some controversy about whether they can be combined in any way, in every way or not, but assuming that they can, they would be one of the types of barges that could be swung from one type of tow to another. But there is no way of doing it, in my opinion, that wouldn't cause a great deal of dislocation.

It has been suggested, of course, that we can file rates on bulk commodities. If there are any bulk commodities, we can move, that the unregulated carrier doesn't want to move, and we are not placed in the imposition of trying to compete with an unpublished rate, by a published rate, we can to some degree publish rates.

But the sum total of those various moves, and I am sure that that is not all that we would be forced to, could never result in as efficient and as low-cost overall transportation of river transportation program that we now have.

Mr. PICKLE. Well, Mr. Hershey, I must say that as one member of the committee, I think we must recognize that we can ship goods, by barges, in a much more economical, faster, and efficient manner than we did years ago, when this law first went into effect, and I think we ought to recognize it, and try to arrange that this modern technology can be used, and not to permit it would be, I think, going back against time.

Now it seems to me that your testimony has been pretty strongly that everybody is for the relief you seek, except the railroads.

Now I notice that one statement of your testimony was deleted, in which you said that they were exacting a rather high price. I assume the price that you had reference to, if you would have made the statement, would have been that they would be granted an exemption, likewise.

Now would you tell me why that you would not want to see this exemption given to the railroads?

Mr. HERSHEY. In answering that question, let me point out that the prices which they want are not only high, but the method of payment is unsatisfactory. They have not suggested, nor when I suggested, have they agreed, that they put one of the issues which they desire in a separate bill, and that they come in here and try to justify it, and that as part of an accommodation, we back off.

They have wanted to amend our bill, in each case, trying to get into it an issue, most of which, all of which, as far as I know, has been raised before, and all of which have encountered tremendous opposition, so the method of payment would have done nothing but frustrate this particular bill, in view of the fact that we need relief in 6 weeks.

Now insofar as the railroad exemption is concerned, as members of this committee know even better than I, that is an issue that has been around for a long time. You are fully aware, I am sure, of the fact that many strong shipper interests oppose it.

The reason that we oppose it is simply a reason that comes about because of the comparison between the size of the railroad industry and the size of the bargeline industry.

Our industry has a gross revenue probably in the area of something like \$40 million. The railroads' gross revenue, I believe, is something

in the area of \$10 billion. The railroads have some traffic which is not competitive with barge. The bargelines have no traffic that is not competitive with rail.

In a toe-to-toe competitive fight for traffic on an unregulated basis, the barge line industry has absolutely no chance of survival.

Now people have spoken. This issue has been raised about safeguards. We have somewhat less confidence in the proposed safeguards than the safeguards we have right now, which is the regulation of bulk traffic by the railroads.

We are not afraid of competition on the basis of relative efficiency or relative advantage, but we are afraid of competition that may be based without some proper umpire, simply on difference in financial strength and power.

Mr. PICKLE. This morning the testimony went into considerable detail about the bills that are proposed, and the changes that would take place.

We didn't really get into a discussion of what it means with respect to cost to the public, and whether we grant exemptions or not to one mode of transportation or another. It is perhaps a debatable question.

The real question is, what is best for the public? And if you can tow commodities, bulk, mixed, in the manner that you showed here, in the modern-day methods, then obviously, this has meant a saving to the public.

At least, you haven't gone up on your rates, these past years. You are hauling a great deal more goods, in spite of increased costs, so I would say that this sounds to me like it is to the public interest, and it is good.

I question, though, if that is to the public interest, why wouldn't it likewise be to the public interest if you allowed the railroads to have this kind of exemption, because this also means that the public would be perhaps getting a different rate?

I asked, this morning, the ICC what they felt about it. Their testimony was that they thought the costs and competition had been equated by 1969, a great deal more than it had or was in 1939, and, therefore, that they thought it would not be unfair competition.

Now do you agree with the ICC strongly?

Mr. HERSHEY. I understood the ICC testimony as being opposed to deregulation of the railroad bulk commodity cargo. Was I incorrect?

Mr. PICKLE. They were proposing a suggested amendment which they had hoped to have restored the status quo before the legislation has been presented before us. This was the instruction of our committee.

Mr. HERSHEY. Right.

Mr. PICKLE. To try to come up with a recommendation. Now they have done this, and your testimony is that you oppose their position?

Mr. HERSHEY. My testimony is that in keeping with the efforts, the successful efforts that we have made, to solidify an industry which has been divided, on the question of regulation for a long time, we have come up with a bill which we feel is the best possible bill in the public interest.

We are not willing to abandon our efforts to try to demonstrate to this committee that this is the best solution. It is a hard choice we have, because we must recognize that you, your committee, and the Commis-

sion, are generously and genuinely attempting to find a way out of what appears to be a dilemma, but we think we are right.

We think that the unregulated carriers should be permitted to take advantage of improved technology. We feel that the limitations currently in the bill are obsolete, and we don't propose to break with them by adopting an alternate piece of legislation which quite frankly does more for us than it does for them, because as I said before, no genuinely concerned party representing private or public interests has really opposed this bill. Our bill is not going to have any deleterious effect upon the railroads.

So, as I say, it is a hard choice, but all I can say is that this is the bill we want.

Mr. PICKLE. Well, you are right, that time is running on you, and you have a severe problem, in that respect.

Do you have any other questions?

Mr. DEVINE. No more, Mr. Chairman.

Mr. PICKLE. Well, again I thank you for coming to the committee and giving us this excellent testimony.

Mr. HERSHEY. Thank you very much, sir.

Mr. STRUBLE. Thank you.

Mr. PICKLE. Our next witness is Mr. Louis A. Schwartz, with the New Orleans Traffic and Transportation Bureau, the International Trade Mart, New Orleans, La.

STATEMENT OF LOUIS A. SCHWARTZ, GENERAL MANAGER, NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU

Mr. SCHWARTZ. Thank you very much.

My name is Louis A. Schwartz. I am general manager of New Orleans Traffic and Transportation Bureau, with headquarters at New Orleans.

I have prepared a statement which I will offer, and ask that the committee copy into the record, because frankly, it is just repetitious of what has already been said by some of the other witnesses this morning.

So I think rather than take the time of the committee, I would ask that it be copied in the record, but there are a few observations that I would like to make, in light of what I heard here this morning.

As mentioned in my statement, the New Orleans Traffic and Transportation Bureau is a nonprofit organization. We represent the port and the community, which includes a number of our constituent bodies like we call the Board of Commissions of the Port of New Orleans, the Board of Trade, Steamship Association, and the other group.

I offered a statement in connection with the previous bill, which was before this committee, in the 90th Congress, and I think it was H.R. 7610.

Our position is definitely in favor of the bill H.R. 8509, which was introduced by Congressman Boggs, who as you know is a Congressman from our district.

In fact, it is unfortunate that Congressman Boggs could not be here this morning. I understand he was tied up elsewhere, but I think he has submitted a statement which has been accepted by this committee.

The one important observation I would like to make would be, I have heard quite a bit this morning with respect to deregulation of all modes of transportation, and frankly, gentlemen, we are getting into—that is, that particular situation, is as high as the sky, and as deep as the ocean, as you know.

I don't know whether you gentlemen were on the committee when the battle went back and forth in connection with our famous H.R. 9903, which had for its purpose the deregulation, I think, of the railroads.

And, frankly, I think you are getting into a broad spectrum that really, I hope, would not be involved in the consideration of these particular bills.

I think these particular bills, as mentioned in Congressman Bogg's bill, 8509, for the purpose of amending section 303(b) by striking out certain portions of the act. One is to avoid this controversy that continues to rise all the time, as the chairman of the commission referred to this morning, about what is the definition of commodities, handled in barge movement as of June 1, 1939, which keeps bobbing up, and the other is the mixing—the mixing of regulated and unregulated commodities.

I would say, very definitely, that we at New Orleans—and we made this statement previously, we would be definitely opposed to deregulation of the railroads. I say the circumstances and conditions with respect to deregulation are entirely different than the purposes that are set forth in this particular bill, which I think is to clarify and maintain the status quo that apparently has been or has been in effect for quite some time.

Now I heard you say, or ask the witnesses, what is the difference between deregulating the railroads and handling the bulk commodities and deregulating the bargelines? I have been in this business for quite some time, in connection with my position as general manager of New Orleans Traffic and Transportation Bureau, and I have handled quite a few of these proceedings, involving competition between the barge lines and railroads.

In fact, I have been involved in most of the major cases in which these controversies have arisen. And my organization, as representing the port and community, is in favor of all modes of transportation.

We must keep New Orleans competitive. We are in favor of rail transportation. Some of the best friends are railroad officials, and I deal with them every day in the year.

I have friends in the barge industry, I have friends in the motor carrier industry. But it has been my experience, over the past years, that frankly, deregulation of the railroads, in connection with the bulk commodities, would not be in the public interest.

Frankly, I don't think the railroads themselves are desiring to have deregulation. I think—I heard a lot of chuckles back there, but I am serious about that. And I think the reason is very frankly that brought out by Congressman Adams this morning.

We have a narrow segment of area where the bargelines do operate. They furnish active competition for the railroads, in connection with the bulk handling of bulk commodities. And sometimes, their influ-

ence is expanded beyond the areas of the particular rivers and valleys that they serve.

But if we ever had an instance, or if we ever get into the area of deregulation of railroads, the public would never know on what basis any of these particular commodities would move, because deregulation of railroads would mean, as you know, wouldn't necessarily mean the publication of any rates. They could handle commodities on any rate basis.

Now you say, "Well, bargelines do it."

Well, why does that affect the railroads? The bargelines do it, and the railroads, in a narrow segment of the area, the bargelines don't serve the entire United States.

I will give you a concrete example, how that would operate. We have some very strong north and south lines, like the Illinois Central, G. M. & O., that serve the Mississippi Valley territory.

Also, they have some strong east-west lines, that serve the port of New York, in official territory. We have a lot of southwestern lines that serve the port of Houston. We have a lot of transcontinental railroads that serve the transcontinental ports, like the Pacific coast.

We know today, the public knows today, what the rate is on grain from Chicago to New Orleans, by picking up a railroad tariff. We know what the rate is today by picking up an official territory tariff that publishes the rate on grains from Chicago to Baltimore. We know what the rate is today on grain moving from Chicago to Pacific coast. And to some degree of accuracy, we know the rate on grain that applies by the bargeline from Chicago to New Orleans.

We know what the common carrier bargelines charge, because they have tariffs on file with the ICC, but there are certain rates that are published by the unregulated carriers that are not on file with ICC, but they are generally known in the trade.

Now you have got a picture of a line serving New Orleans, from Chicago, endeavoring to compete with a railroad serving the port of Baltimore, or the Pacific coast, if the particular rate on grain was not known to the general public, and also known to the railroads who attempt to meet that competition.

In other words, it opens up an entirely different area of competition, when you talk about deregulating a bulk commodity as far as the railroads, compared with the bargelines.

Now we talk about this competition between the railroads and the bargelines today. It has been my experience from these cases that I have participated in before the Commission, that since the amendment to the act in 1958, the railroads have found very little difficulty in meeting the competition of the bargelines, insofar as certain of these bulk commodities are concerned.

In fact, if you will read the decisions of the Commission, in some of these cases, you will realize that the criteria has been such in the recent days, that the only criteria is the question of operating costs.

Because the rail carriers have, by reason of multiple car rates on grain, by reason of trainload rates on grain, by reason of multiple car rates on a lot of bulk commodities, have been able to meet effectively the competition of the bargelines on the rivers.

Now the public has a very definite interest in this particular proceeding, for the reason that barge competition as such has assisted the

public. It has resulted in economic handling of both the barge traffic and the rail traffic, because the rail carriers, because of the barge competition, have, over the years, reduced the level of their rates to meet this type of competition.

Some of this competition has spread beyond the rivers not as much as possibly sometimes the interior people would like it to be. But it has resulted in lower transportation costs.

We had one situation lately where because of the barge-truck competition on the Mississippi River to New Orleans the rail lines serving the port of Houston reduced their rates substantially in order to meet the competition that was created in the Valley. But when we get out here in the area that Mr. Adams talks about in the plains territory, you will find generally that it is rather difficult to meet large competition because of the longer hauls via rail or truck to the Missouri River.

You see as you get away from the river, of course, the element of barge competition disappears because it is a matter of economics.

So, frankly, I would prefer in my own organization, the way I feel about it, to see that this committee make some determination with respect to H.R. 8509 either before the expiration date of June 30, 1969, or finding that they not be able to do it that, the present date be extended for a reasonable period of time reasonable that you think you could do it.

But don't try to get this particular H.R. 8509 bill mixed up in another deregulation bill like the old Harris bill because then you bring into the picture a lot of opposing competitive factors not involved in H.R. 8509. In this particular case, H.R. 8509, you will find shippers in support of it because of the flexibility that it will afford the commingling of regulated and nonregulated commodities.

But when you go into a question of deregulation per se, you maybe will find a lot of shippers will appear before you in opposition to it.

So, therefore, I think that in the interest of disposing of this matter here, either before the deadline date or an extended date, that this particular bill or series of bills be passed on or decided on their merits and then if this committee feels that they would be disposed to explore the question of deregulating different modes of transportation, and go into it under a separate bill.

That is about all I have. I am glad to have the opportunity to speak to you and at least express my views because I have been in this business for quite some time.

(Mr. Schwartz' prepared statement follows:)

STATEMENT OF LOUIS A. SCHWARTZ, GENERAL MANAGER, NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU

I appear here on behalf of the New Orleans Traffic and Transportation Bureau, a non-profit organization representing the Port and City of New Orleans in all matters pertaining to transportation, the membership of which includes such organizations as the Board of Commissioners of the Port of New Orleans, New Orleans Board of Trade, Ltd., New Orleans Steamship Association, etc. in support of H.R. 8509 and related measures, the objective of which is to amend Section 303 (b) of the Interstate Commerce Act by deleting therefrom various limitations covering the exemption from regulation granted by the aforesaid section to certain dry bulk commodities.

Section 303 (b) authorizes barge operators to transport up to three exempt dry bulk commodities in a single tow without being subject to regulation by the Interstate Commerce Act. This exemption, however, is not available if the barge

operator hauls more than three dry bulk commodities in a single vessel or "mingles exempt and non-exempt traffic in a single vessel". Further, the aforesaid section defines two or more barges operated as a unit as a single vessel.

The question of mingling regulated and non-regulated arose out of recent Interstate Commerce Commission and Court interpretation of Section 303 (b) 311 ICC 103 (258 F. Supp. 864). Under these interpretations dry bulk commodities cannot be mingled in a tow with regulated commodities without loss of the exemption from regulation. The Interstate Commerce Commission has ordered the barge lines operating on our inland waterways to conform with the provisions of the Interstate Commerce Act not later than July 1, 1969.

Our Bureau wishes to go on record in support of H.R. 8509 and related measures, as to revert to barge line operations of ten or more years ago will only mean that the shipping public making use of barge transportation and deriving benefits from low cost transportation on the inland waterways will be deprived of the economies they are presently enjoying.

It is important that Congress act upon the involved bill as expeditiously as possible, particularly since the outstanding enforcement order of the Interstate Commerce Commission is scheduled to become effective June 30, 1969.

Mr. PICKLE. Your testimony has been helpful and practical.

Were you at the hearings this morning?

Mr. SCHWARTZ. Yes, I was here.

Mr. PICKLE. Let me ask your opinion then of the proposed amendment that the ICC had offered as their suggested solution. How do you feel about that?

Mr. SCHWARTZ. I think the ICC solution goes somewhat beyond what I think the barge carriers themselves propose—I am not speaking for them, but frankly, I think Congressman Boggs' bill, which is H.R. 8509, is about the minimum to straighten out the situation as we see it.

Mr. PICKLE. I understand you are for Congressman Boggs' bill. The record will show that.

What is your objection to the recommendation offered by the ICC this morning?

Mr. SCHWARTZ. I have no objection if the committee feels disposed to go as far as what the ICC recommends. Of course where I part with the ICC right straight down the middle is their recommendation that all modes of transportation be deregulated. I wouldn't subscribe to that at all.

Mr. PICKLE. You very much oppose the deregulation of the railway industry. How do you feel if we remove all of these exemptions?

Mr. SCHWARTZ. Do you mean for the railroads, the bargelines, and everything?

Mr. PICKLE. Yes.

Mr. SCHWARTZ. You mean make them all subject to regulation?

Mr. PICKLE. Yes.

Mr. SCHWARTZ. You have me in the same spot as you had Mr. Hershey. My personal opinion would be, I would prefer to see regulation rather than deregulation. I think if we get deregulation, you are really opening a Pandora's box of problems that would be had to solve.

Mr. PICKLE. You would prefer the regulation of all commodities?

Mr. SCHWARTZ. Rather than deregulation of all commodities. If you want to cut the pie that thin because I think deregulation of all commodities would then lead you back to the days of midnight tariffs, of course the railroads contend otherwise because of the act, but I think

it would really pose quite a problem for the shipping public if all commodities were deregulated.

Mr. PICKLE. Mr. Devine?

Mr. DEVINE. I have one question. You made a suggestion here. Don't you think we have procrastinated long enough? We have already had two extensions beyond the June 30 deadline. It will expire again this year. You wouldn't really want to see us continue it again until next year and go through this same exercise, would you?

Mr. SCHWARTZ. No. I said that if the committee found that because of time limitations, I would prefer the committee to come up and make a decision before the deadline. That way I think everybody would know where they stood, both the shipping public and the bargelines and the railroads.

Mr. DEVINE. We put it over twice before kind of with the hopes of perhaps the industries would get together and come up with an amicable solution and something that would be agreeable to all parties concerned.

It hasn't happened. It seems to me we are now in the position of having to go one route or another and not delay.

Mr. SCHWARTZ. I think I will have to agree with you on that. Of course I have not heard the railroad story yet.

Mr. DEVINE. Stick around tomorrow and you probably will.

Mr. SCHWARTZ. I am going to try to be here tomorrow.

I thank you very much for the privilege of appearing before you. I just hope that you will come to some quick decision. Let's leave it on that note.

Mr. PICKLE. Thank you, Mr. Schwartz.

I understand that Mr. William Stockton is here and would like to present his testimony this afternoon.

Mr. Stockton, come on up and give us the benefit of your testimony. We may be subject to a rollcall. The House is in session. So, if you could make your remarks as brief as possible and file the entire statement, it would be helpful.

STATEMENT OF WILLIAM G. STOCKTON, CHAIRMAN, INLAND WATERWAYS COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY L. J. DORR, EXECUTIVE VICE PRESIDENT

Mr. STOCKTON. I would like to have L. J. Dorr, executive vice president of the National Industrial Traffic League be with me.

My name is William Stockton. I appear in behalf of the National Industrial Traffic League in my capacity as chairman of its inland waterways committee.

I am vice president of traffic of Peabody Coal Co., of St. Louis, Mo., and I am also a member of the executive committee of the National Industrial Traffic League.

I have a statement here which is seven pages in length. At your suggestion, I believe, I will just highlight it with a few comments and file it for the record.

The National Industrial Traffic League is a voluntary organization of shippers, large, medium and small, shippers associations, boards of trade and chambers of commerce, all concerned with freight rates, traffic, and transportation.

The membership is spread throughout the United States and its members use all modes of transportation—inland waterways, land, sea, and air.

The league has as its primary dedication of purpose the development and maintenance in the public interest of an efficient and economic transportation service by carriers of all modes.

As a part of its stated and established policy, the league solidly supports the bill under consideration here, H.R. 8298, and the other identical bills.

The policy of the league, as I say, is stated and established. I would like to read it to you.

Water carrier exemptions. The league approves retention of the bulk commodity exemptions appearing in section 303 (b) and (c) of the Interstate Commerce Act, modified or amended by eliminations, first of the present "three commodity" restrictions and, second, of the present "as of June 1, 1939," restriction retaining, however, the present nonapplication of the exemption to transportation subject to the provisions of the Intercoastal Shipping Act, 1933, as amended.

I would like to state also as a representative of the Peabody Coal Co. and respectfully point out that our industry efforts to hold down the costs of energy from coal through the use of 1969 mining technology are impaired in their effectiveness using 1939 technology in waterway shipping.

To this end, of course, we are interested in the cheapest kind of transportation for the movement of our product to the public.

Thank you very much.

(Mr. Stockton's prepared statement follows:)

STATEMENT OF WILLIAM G. STOCKTON, CHAIRMAN, INLAND WATERWAYS
COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman, Members of the Subcommittee:

My name is William G. Stockton. I appear in behalf of The National Industrial Traffic League in my capacity as Chairman of its Inland Waterways Committee. I am Vice President-Traffic of Peabody Coal Company, St. Louis, Missouri. I am also a member of the Executive Committee of The National Industrial Traffic League.

IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League (which I shall sometimes refer to as the League) is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation. The members of the National Industrial Traffic League are located throughout the United States, consist of enterprises large, medium and small, and use all modes of transportation, by inland waterway, land, sea and air. Carriers are ineligible for membership in the League.

For more than sixty years of its existence, the National Industrial Traffic League has been dedicated to the development and maintenance, in the public interest, of an efficient and economical transportation service by carriers of all modes. To that end, the membership of the League has adopted, and continues to adopt, certain policies or positions with respect to the maintenance of such a transportation system.

The officers and chairmen of the various committees present the League's view on proposed legislation such as is here under consideration and advise the Congress of the policy of the League insofar as it is pertinent to specific legislation. The League has frequently presented its views to Congress on proposed transportation legislation, and we appreciate very much the opportunity afforded us to do so again today.

LEGISLATION 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."

H.R. 8298 and other identical bills, contain 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 National Industrial Traffic League has for many years had a very clear-cut policy on the matter here involved. That policy is quoted below:

"Water Carrier Exemptions.—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, retaining however the present nonapplication of the exemption to transportation subject to the provisions of the Intercoastal Shipping Act, 1933, as amended."

It will be observed that H.R. 8298 is quite compatible with the above established policy of the League. The League here appears in support of the enactment of H.R. 8298.

ELIMINATION OF THE JUNE 1, 1939, STATUTORY DATE

Since there are basically two amendments to Section 303(b) contained in H.R. 8298, I shall discuss them in consecutive order. As above indicated the second sentence of Section 303(b) would be amended by deletion of the present benchmark in time as to what are "commodities in bulk." At present this is determined "in accordance with existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939." In other words, definition of bulk commodities is being governed by practices in vogue and products being produced almost 30 years ago. This implies an assumption, or conclusion, that no further progress will be made subsequent to that date. Events have proved this wrong.

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 that the transportation industry, and the laws applicable to the transportation industry, shall keep pace with technological change, 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, as 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 H.R. 8298, 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 non-bulk 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; we understand that this has been particularly true within the last ten 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 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 a 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 an important consideration. In addition, delays in moving barges required to assemble tows of optimum size would add to the expense of the operation of the barge lines in that, for example, depreciation on barges accrues from day to day. Further, because of the poor utilization of available barges the barge operators would, of necessity, be required to make substantial unnecessary capital investments in order to have barges available, which investments are not now necessary because of the expeditious movement of the barges.

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.

Under either alternative, the increased operating costs would inevitably be reflected in the rate structures, to the detriment of the public interest.

CONCLUSION

Consequently. The National Industrial Traffic League strongly supports H.R. 8298 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.

May I thank the Chairman and the members of the Subcommittee for the opportunity to present these views in behalf of the National Industrial Traffic League.

Mr. PICKLE. I thank you, Mr. Stockton. Does the gentleman with you wish to make any additional statement?

Mr. DORR. No, except to point out that this is a long time adopted policy of the League. The League has about 1,700 members and has considered this policy several times.

Mr. PICKLE. Are your members stretched up and down the river arteries?

Mr. DORR. They are scattered throughout the United States.

Mr. PICKLE. Whether they are connected with water or port, you would be shipping them inland and you have members who are located inland?

Mr. STOCKTON. Yes, indeed.

Mr. PICKLE. Did you hear the testimony this morning from ICC?

Mr. STOCKTON. Yes, sir.

Mr. PICKLE. How do you feel about the proposal that they have recommended?

Mr. STOCKTON. Quite frankly, I haven't had an opportunity to study it. I can't say that I understand it. I am just not prepared to say whether I agree with it or not.

Mr. PICKLE. We were glad to have you before the committee. There are no other witnesses this afternoon.

The committee resumes tomorrow morning at 10 o'clock in the same room.

(The following correspondence was received for the record:)

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., May 23, 1969.

HON. VIRGINIA MAE BROWN,
Interstate Commerce Commission,
Washington, D.C.

DEAR CHAIRMAN BROWN: In the course of the hearings this week on H.R. 8298 and related bills amending Section 303(b) of the Interstate Commerce Act relative to the so-called "mixing" of regulated and non regulated transportation in one tow, I asked certain questions regarding the differentiation to be made in the Commission's last decision, namely, W-C-5, and previous decisions relative to the situation.

It is my understanding that since the enactment of this statute, the Commission over the years has treated a number of times with this question of mixing and towing of mixed tows. Over the years these decisions have also been subject to court decisions, the last of which was the affirmation by the Supreme Court of a lower court decision sustaining your Mississippi Valley order.

Inasmuch as there now is before us a proposal to overturn this last order, I wish that you would have prepared for me a statement of just what it is in this last court decision that limits the mixing of regulated and unregulated commodities which was not contained in the previous court decisions sustaining your orders in American Commercial Barge Lines and in Commercial Transport. (I am

well aware that to some degree the declaratory order in W-C-5 comprises certain material contained in the previous orders.) My question is, what are the limitations in this last order and decision which were not imposed by the previous orders and decisions?

Sincerely yours,

JOHN D. DINGELL,
Member of Congress.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., June 16, 1969.

Hon. JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: This is in response to your letter of June 9, 1969, pertaining to the Commission's decision in No. W-C-5, *Mississippi Valley Barge Co., Exemption, Section 303(b)*, 311 I.C.C. 103 (1960), sustained *sub nom.*, *Gulf Canal Lines v. United States*, 258 F. Supp. 864 (S.D. Tex. 1966), aff'd mem., 386 U.S. 348 (1967). I regret that you found my letter of June 4, 1969, not as clear as it might have been in explaining the import of the Commission's decision. You are quite right, however, in your understanding that the Commission therein decided that mixing bulk with non-bulk commodities for only a portion of a through movement from origin to destination would make the exemption of section 303(b) of the Interstate Commerce Act inapplicable for the entire movement.

If I can be of further assistance, I should welcome hearing from you.

Sincerely,

VIRGINIA MAE BROWN, *Chairman.*

(Whereupon, at 3:45 p.m., the subcommittee adjourned to reconvene at 10 a.m., Wednesday, May 21, 1969.)

WATER CARRIER MIXING RULE

WEDNESDAY, MAY 21, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10:30 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The committee will come to order.

This is the continuation of hearings on H.R. 8298, H.R. 8376, and H.R. 8509.

Our first witness will be our colleague, Mr. Moorhead of Pennsylvania.

STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MOORHEAD. Thank you, Mr. Chairman. I have a written statement which I could summarize. But I have found from experience, hearing other witnesses, that I would probably be briefer if I read it.

Mr. Chairman, I very much appreciate the opportunity to appear this morning in support of H.R. 8298, H.R. 8376, and their companion bills.

In terms of tonnage, as you well know, the port of Pittsburgh annually develops one of the largest volumes of traffic in the Nation. I need hardly elaborate on the fact that without waterborne commerce on the rivers, the Pittsburgh region would probably be largely rural today.

It is that magic combination of efficient rail service, water service, highway, and other services which has made possible the Pittsburgh industrial complex which is of such vital importance to the Nation in war and peace.

Just as efficient rail service is essential to our region, efficient barge service on the Ohio-Mississippi river system enlarges the markets of our industries and brings us essential raw materials at the lowest possible cost.

This simple proposition to modernize the dry-bulk exemption which would permit the bargelines to continue to apply the technological advances which have led to lower costs for the industries in my district, is urgently needed.

Efficient transportation improves the competitive opportunities of industry, makes more secure the employment of their workers, and

otherwise enhances their economic opportunities. I know your committee has been under a heavy workload, but I am counting on you to help my district with this essential modernization of the 1940 act.

I am deeply impressed with the improvement in productivity of the barge service since the large towboats were first introduced in the middle 1950's and very proud that this technological advance was pioneered by a Pittsburgh company, the Dravo Corp.

It is inconceivable to me that the technological advances which have led to the lowering of average barge rates at a time when rates and prices in the rest of the economy are increasing would be discarded and the clock turned back 15 years.

I therefore urge, for the welfare of the industries in my district and for the welfare of all the communities served by the 8,000 miles of inland waterways, that this committee promptly and favorably report H.R. 8298.

Thank you for permitting me to make this recommendation.

Mr. FRIEDEL. Are there any questions?

Thank you very much, Congressman.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. FRIEDEL. I have several telegrams and letters. If there is no objection, we will insert them in the record.

(The telegrams and letters referred to follow:)

[Telegram]

ARCHER DANIELS MIDLAND CO.,
Decatur, Ill., May 19, 1969.

Re public hearing scheduled 10 a.m., May 20, on H.R. 8298, H.R. 8376 and similar bills which seek amendment of 303(b) of the Interstate Commerce Act as amended (49 U.S.C. 903(?)) that so-called Mixing Rule.

HON. SAMUEL H. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics, House Office Building, Washington, D.C.

We are unable to attend hearing but wish to be on record as supporting this proposed legislation. We are a large user of the inland waterways and submit that only through passage and enactment of this proposed legislation can the efficiencies designed into the existing water carrier fleet be achieved.

As members of the National Industrial Traffic League who are scheduled to appear before you at this hearing, we join in and support that position.

JOHN E. HARVEY,
Director of Transportation.

[Telegram]

ST. LOUIS TERMINAL CORP.
St. Louis, Mo., May 20, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics,
U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: Our company, as both the major barge terminal operators in the ports of St. Louis, Memphis, and Kansas City, and as a transportation adviser and service agency for many of the Nation's largest industries and thus, largest transportation users urgently request you to support the enactment of House bills H.R. 8298, H.R. 8376, and H.R. 8509. Failure to enact these bills would, in effect, deny to the American people the technological benefits and reduced transportation costs which are now being made available by the inland waterways industry to American industry and, more important, the American people who must pay the charges for all delivered services. We will, at your request, provide many specific details on the adverse effects of not passing the

requested legislation, and we would urge you to advise your colleagues as well, of our deep and earnest interest in the successful resolution of this problem. We further ask that this formal request be placed on record in your hearings being conducted on these three bills.

Very respectfully yours,

CHARLES J. LAMOTHE, *Chairman of the Board.*

[Telegram]

OMAHA DOCK BOARD,
Omaha, Nebr., May 20, 1969.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics,
House Interstate and Foreign Commerce Committee,
Washington, D.C.:*

The Omaha Dock Board, with its investment in municipally owned river front facilities, is deeply interested in the passage of H.R. 8298, H.R. 8376, and H.R. 8509, which would eliminate a number of archaic restrictions on the movement of river cargoes. The investment at the municipal dock has been geared to the movement of so-called exempt commodities such as fertilizers and grain. Passage of these bills will permit Missouri River tonnages to continue to grow, will materially increase city income from the dock, and will permit the dock board to continue its expansion and construction program. On the other hand, defeat will seriously hamper our progress.

We hope that you will look at the big picture and the relationship of these bills on Omaha's progress.

JOHN G. HAHN,
President.

ENGELHARD HANOVIA, INC.
Newark, N.J., May 2, 1969.

HON. SAMUEL N. FRIEDEL,
*Chairman of the House Subcommittee on Transportation and Aeronautics, House
of Representatives, Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: We have used river transportation for the shipment of ferrochrome and chrome ore from Burnside and New Orleans to the markets of the Midwest for a number of years. The main reason for using the waterways is the economic advantage this mode of transportation has over land movements for long distance haulage of bulk commodities.

We strongly favor the enactment of Bill Nos. H.R. 8509, H.R. 8376 and H.R. 8298 that are presently before the House Subcommittee on Transportation and Aeronautics. These bills would insure continued low rates for movement of bulk commodities by water and would permit the barge lines to accumulate large tows thereby maintaining the lowest possible costs through efficient operations. Also, the bills would guard against artificially increasing the costs of the water carriers.

I trust that our favorable view towards the enactment of Bill Nos. H.R. 8509, H.R. 8376 and H.R. 8298 will be given your consideration. We, therefore, ask that the comments made in this letter be made part of the record.

Very truly yours,

ENGELHARD HANOVIA, INC.
THOMAS W. CUSHING, *Vice President.*

AFL-CIO MARITIME COMMITTEE,
Washington, D.C., May 15, 1969.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics, Interstate and
Foreign Commerce Committee, U.S. House of Representatives, Washington,
D.C.*

DEAR CONGRESSMAN FRIEDEL: Attached is a copy of our statement pertaining to the mixing rule bills numbered H.R. 8509, H.R. 8376 and H.R. 8398, which are before your House Subcommittee on Transportation and Aeronautics.

As you know, we are in strong support of the above bills which would, as Senator Magnuson declared last year, revise the "archaic and restrictive" 1940 statute. The above bills are needed if we are to realize the great progress facing our inland waterways. Without such amendment the inland waterways will be stifled with the result that growth could become stunted instead of full and wholesome. Needless to say, our Nation cannot afford to permit archaic laws to restrain progress.

We thank you for permitting us to submit the attached statement for the record.

Sincerely yours,

HOYT S. HADDOCK,
Executive Director.

Attachment

STATEMENT OF THE AFL-CIO MARITIME COMMITTEE

My name is Hoyt S. Haddock and I am Executive Director of the AFL-CIO Maritime Committee. The AFL-CIO Maritime Committee represents approximately 85 percent of our nation's maritime workers who belong to the following affiliated international unions: the National Maritime Union; American Radio Association; International Longshoremen's Association; Industrial Union of Marine and Shipbuilding Workers of America; National Marine Engineers' Beneficial Association; International Organization of Masters, Mates and Pilots; and the Great Lakes Seamen, Local 5000, United Steelworkers of America.

The maritime workers on the inland river barge lines have a very strong and personal stake in the companies operating on these all-important inland waterways. Therefore, these workers manning the towboats and barges urge favorable consideration of H.R. 8509, H.R. 8376 and H.R. 8298.

Labor and management on the rivers must continue a good joint relationship aimed at increasing the efficiency of inland towboats and barge operations as we have done over the past twenty years. As you know, this requires forward-looking management who not only consider the welfare of their workers, but who diligently seek and carry cargoes in a manner competitive with other modes of transportation such as railroads and trucking. Also this requires labor which does not resist sensible technological advancement but supports it, which of course means supporting the mixing of cargoes in the river tows.

We do not see any rhyme or reason to the exemptions from regulations by number of commodities or by whether regulated and unregulated commodities are physically transported in a single tow. All restrictive illogical requirements should be eliminated in order that progress on the rivers not be stifled.

Carriers which are not subject to coverage by the Interstate Commerce Act are not usually dealing with organized labor. Therefore, their wage rates and working conditions are far below those of regulated carriers. If the Transportation Policy has any meaning whatsoever, this meaning is that it does not intend to reward the sub-standard unregulated carriers by the restrictive policy aimed solely at the regulated carriers which compete with the unregulated carriers on the rivers.

We have studied carefully the extremely complicated reversals of policy of the Interstate Commerce Commission on the mixing rule. We do not intend to repeat the technical details of this problem which have been thoroughly aired before your Subcommittee. However, we re-emphasize our very strong argument that unless a solution is found and applied, the regulated carriers on the rivers will be placed in an untenable position and permanently injured.

We appeal to you to find a practical solution that will permit the certified regulated carriers to continue to mix dry bulk and so-called non-bulk commodities in the same tow. To accomplish this we urge you to recommend and strive for the adoption of H.R. 8509, and all indential bills, to this necessary and meritorious measure.

We thank you for your very kind permission which enables us to present our views on this serious matter to you and your colleagues.

CHICAGO REGIONAL PORT DISTRICT,
Chicago, Ill., May 15, 1969.

HON. SAM FRIEDEL,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR MR. FRIEDEL: For the last several years the Port District has been actively involved with many others in pressing for favorable congressional action in connection with legislation that will permit inland waterway operators to mix regulated and unregulated barges in one tow. We have witnessed, especially over the last ten years, many advanced changes in the technique of tow boat construction and, as you know, it is not unusual for modern push-boats in the 5,000-horse-power class, and better, to push 20 to 40 barges in one tow.

We can think of nothing in the way of a legislative mandate that will so severely curtail river operations as denying such support and for that reason the Port District strongly urges affirmative action on H.R. 8509, H.R. 8376 and H.R. 8298. There is no question, in our opinion, that the passage of this legislation is absolutely essential to the maintenance of economy and efficiency in our inland waterway transportation.

With kindest regards, I am,
Sincerely yours,

MAXIM M. COHEN,
General Manager.

OMAHA CHAMBER OF COMMERCE,
Omaha, Nebr., May 16, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics,
House Office Building, Washington, D.C.

DEAR MR. FRIEDEL: The Omaha Chamber of Commerce urges the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee to approve H.R. 8298 and similar bills pertaining to the barge mixing rule. This legislation would amend Section 303(b) of the Interstate Commerce Act, which currently prohibits carrying more than three bulk commodities in one tow of vessels or the mixing of regulated or non-regulated commodities without being subject to rate regulation.

We believe the existing language is archaic and restrictive in view of the fact that technology has given rise to towboats with greater horsepower capable of moving more barges per towing unit. Revising the law would enable barge lines to assemble tows of optimum size within a minimum time span without regard to how many individual commodities are contained in various barges or regardless of whether any of the barges contain non-bulk commodities.

Industry and consumers derive benefits from the low cost of water transportation. We recognize that each mode of transport has its inherent advantages. It is our policy to support legislation that will improve transportation on the whole, or improve a mode of transportation, and we believe this legislation is directed to that end.

We request that this letter be incorporated into the Congressional Record hearings.

Respectfully,

J. D. ANDERSON,
President.

Mr. FRIEDEL. Our next witness will be Mr. Harry J. Breithaupt, Jr., general solicitor, Association of American Railroads.

We welcome you and you have the floor.

**STATEMENT OF HARRY J. BREITHAAPT, JR., GENERAL SOLICITOR,
ASSOCIATION OF AMERICAN RAILROADS**

Mr. BREITHAAPT. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Harry J. Breithaupt, Jr., and I am general solicitor of the Association of American Railroads, with headquarters in this city. I appear here today by the authority of our board of directors and my purpose in so appearing is to express the views of our association and its members on the three bills you are considering.

Speaking for our member lines, the association opposes these bills unless they be so amended as to extend to the railroads an exemption from regulation in the transportation of bulk commodities comparable to that enjoyed—and that to be enjoyed—by the water carriers.

Mr. Chairman, it would serve no useful purpose, I think, for me to trace the long history of the Commission proceedings and court decisions which have brought the bargelines to their present desperation. That history has been traced before you a number of times yesterday and in the hearings 2 years ago.

The situation is that the ICC and now the courts, including the Supreme Court, have said that section 303(b) of the Interstate Commerce Act means exactly what it says: that is, that in order to avail themselves of the exemption contained in that section 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.

The clear objective of the bargelines, stated simply, 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.

This proposed liberalization of the regulatory exemption given water carriers in the transportation of bulk commodities would have a most adverse competitive effect upon the railroads unless the railroads are, at the same time, given a similar exemption. The present exemption discriminates against the railroads. To broaden the scope of that exemption by removing the existing limitations upon its applicability, without at the same time extending an exemption to the railroads, would aggravate what is already a gross discrimination against the railroads.

As the law now stands, barge lines 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 Com-

merce Act; and to avoid unjust or undue discrimination, preference or prejudice. Rail rates on these commodities are subject to protest and complaint, and to suspension pending investigation and determination of their lawfulness. Such protests and complaints may, indeed, be made by the competing barge lines themselves, who have no regulation whatsoever.

The barge lines, 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, secretly and without notice to anyone, and without publication, on 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. During the course of hearings conducted by the Senate Surface Transportation Subcommittee on S. 1314 (90th Cong.), a counterpart bill, 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; later Undersecretary 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 publication of their rates 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. Moreover, publication is only a part of the railroads' handicap. Not only must the railroads publish their rates; those rates, as I have pointed out, are subject to comprehensive and rigid regulation.

Surely the railroads have just cause for complaint; and they have even greater cause for concern when faced, as we are, with this proposal to enlarge the scope of the 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. I want to emphasize that bulk commodities constitute an important part of railroad traffic and substantial quantities of this traffic are the subject of intense competition between the two modes. To prefer the water carriers, and give them a regulatory advantage, in the competitive effort to obtain and retain this business is manifestly unjust.

Even apart and aside from the matter of regulatory preference, I point out in passing, the competitive advantage of the bargelines in another important respect is already considerable. This is by reason of the fact—which I shall not labor on this occasion—that neither the waterway operators nor their shipper-users pay anything for their use of waterway facilities provided at great taxpayer expense. There are no user charges whatsoever on the waterways despite the expenditure of tremendous sums of public moneys for the construction, improvement, operation and maintenance of these facilities. Rail-

roads, on the other hand, must pay for the acquisition, construction, and maintenance of their rights-of-way and must pay heavy taxes on them.

The bargelines are not in a position to assert, in connection with the bills you are now considering, that they have been surprised by an unexpected and unforeseen turn of events. They may have hoped 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 attempting to perpetuate. But the fact is that ever since those practices were first instituted the bargelines have proceeded under a cloud, and they have known that they were proceeding under a cloud. They cannot claim 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 (*Gulf Canal Lines v. United States*, 386 U.S. 348), 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, section 303(b), 311 I.C.C. 103). 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 over 2 years ago.

Thus, the barge lines 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 methods of operation.

Even beyond that, however, the lawfulness of the operating practices 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 its final resolution, occasioned introduction of the legislation to which this hearing is directed.

With this history, the water carriers cannot claim surprise. They have been knowingly operating at their own peril all along, since the outset.

The railroads cannot sit silently by and, without protest, hear it said as an argument for enactment of these bills 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, February 6, 1967—Congressional Record for March 16, 1967, page 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 being harmed, by what has now been judicially 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 enact this proposed legislation in its present form and thus legalize 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 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, argued against the lawfulness of 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, the Senate Commerce 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.

This very subcommittee conducted hearings on proposed legislation having to do with the bulk commodity exemption and with the mixing rule, and in that year 1962, in the hearings before this subcommittee, I and other representatives of the railroads appeared before you stating the same position that we take today.

Time after time, beginning before the two instances to which I have referred and before the water carriers embarked upon their particular operation they now say that they must have legislative sanction to continue so that their business won't be disrupted, and continuing right up to the present we have expressed to the committees of the Congress 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 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 me emphasize, is an unlawful "status quo". We say, as a matter of simple equity, 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 existing statute unless at the same time—and in the same bill—the Congress extends to the railroads the same exemption from regulation that the water carriers have, and are to have, in the transportation of bulk commodities.

At this juncture I wish to point out, furthermore, that the legislative proposal embodied in the bills you are now considering goes 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. To avoid lengthy elaboration on this aspect of the matter, I shall merely suggest to the subcommittee that if it decides to report H.R. 8298 or similar legislation without having amended the bill in such a way as to provide a bulk commodity exemption for the railroads too—and naturally I hope the subcommittee does not determine upon that course of action—then consideration ought to be given to an amendment that would at least restrict the effect of the bill to overturning the ICC order in question.

As drafted and introduced these bills are far-reaching and would, in fact, do much more than “maintain the status quo.” I should not like for the brevity of my comment on this feature of the bills 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 barge lines are being over 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 meaningless, if this legislation is not passed. I think they exaggerate on that score, for the real issue presented by the bills 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.

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

I sat in this hearing room before you yesterday, Mr. Chairman, and gentlemen, and listened to Professor Ruppenthal from Stanford University highlight the study referred to as having been run through the computers out in California.

This study is on this premise, and I read from it at page 32:

After the data was separated into the above mentioned categories, it was used to simulate what the situation would have been in 1967 had the barge operators complied with the mixing rule and separated bulk and regulated cargo.

If that is the premise of this study it is not worth the paper it is written on. They don't have to separate these commodities. All they have to do is type out their rates for the formerly exempt commodities, put them in a tariff, file with the Commission, and post them, and continue the tows unbroken.

So much for the Ruppenthal study.

It is at this point, however, that those who favor these bills, 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 barge lines to retain operating efficiencies and economies that they have—through unauthorized methods of operation—already attained.

As to this, let me say that it would be a rare thing indeed 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 and burdens of regulation. The railroads feel that way about certain aspects of their own regulation. In the case of the bills before you, however, there is more at stake than the mere matter of efficiencies and economies in barge line operations. At stake are the statutory rules under which the water carriers and the railroads conduct their intermodal competition for a great deal of bulk commodity traffic that is critically important to them both.

Under the present statute the barge lines are preferred and the railroads are disadvantaged. The bills you are considering would increase the advantage already enjoyed by the barge lines and intensify the discrimination suffered by the railroads. That being so, the railroads vigorously oppose H.R. 8298 and the other bills on this subject unless so amended as to provide for deregulation of the railroads in the transportation of bulk commodities, thus giving them equality of competitive opportunity with the water carriers in this respect.

If such an amendment is adopted and made a part of the bill, the railroads will withdraw their opposition.

Thank you.

Mr. FRIEDEL. Thank you, Mr. Breithaupt.

Mr. Breithaupt, in the hearings we held 2 years ago, you submitted draft language at my request which would simply overturn the ICC, WC 5 decision. This was not recommended by you for adoption, but simply in helping us in drafting the bill.

Do you think that same language would be in your draft today?

Mr. BREITHAUP. I know the draft to which you make reference, Mr. Chairman. Indeed it was published at page 145 of the printed hearings last time. It did represent my best effort, best individual effort, at that time to draft a legislative proposal that would have the limited effect of overcoming the decision of the Commission and the courts in the WC 5 proceeding.

I said in the letter that I wanted to give the matter further thought, and if I could improve upon it, I would advise the subcommittee or its Chairman.

I have given it further thought and up until yesterday had no reason to believe that I had any suggestion for its alteration. I observed yesterday that the Interstate Commerce Commission came forward with a draft of legislative language which in the view of its Chairman and Associate General Counsel would do no more than overrule the decision in WC 5.

It differs a little bit from the language that I had devised. Frankly, between yesterday and today, there has not been an adequate opportunity for me to make up my mind about the two drafts.

Mr. FRIEDEL. I wish you would make a further study and give the Committee the benefit of your views.

Mr. BREITHAUP. I will. I think probably I misunderstood the Chairman of the Commission yesterday in thinking that the proposal was a new idea. I found in doing a little bit of research that the draft bill submitted by the Commission yesterday is identical with a legislative proposal that was before this subcommittee in 1962.

At that time, contrary to the view of the Associate General Counsel of the Commission as expressed yesterday, on the record of your earlier hearings, and I quote from page 14 of the hearings in the 87th Congress on H.R. 9046, the then Chairman of the Interstate Commerce Commission had this to say: "This measure . . .", he was referring to a measure identical in language to the one submitted yesterday, "how-ever appears to go beyond the practices dealt with in docket No. WC 5."

And then he goes on to elaborate.

So, apparently, there has been some change of view in the Commission as to what this bill would do. I would like to think about it a little further.

(The following letter was received for the record:)

AMERICAN RAILROADS,
Washington, D.C., June 6, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: When I appeared before the Subcommittee on Transportation and Aeronautics on May 21, 1969, to express the views of the Association of American Railroads on H.R. 8298, H.R. 8376 and H.R. 8509 (91st Congress), the bulk commodity exemption "mixing rule" bills, then the subject of hearings, I was asked by you and other members of the Subcommittee to submit my views as to whether a substitute proposal advanced on May 20, 1969, by the Chairman of the Interstate Commerce Commission goes beyond what would be needed to overrule or overturn the ruling of the Commission as upheld by the Courts in the proceeding known as W-C-5 [*Mississippi Valley Barge Line Company Exemption, Section 303(b)*], 311 I.C.C. 103 (1960), sustained sub nom. *Gulf Canal Lines, Inc. v. United States*, 258 F.Supp. 864 (S.D. Tex. 1966), aff'd. per curiam, 386 U.S. 348 (1967)].

In my judgment, the Commission's substitute proposal goes far beyond mere reversal of the ruling in W-C-5. That ruling was described in these simple terms by the District Court when it reviewed and sustained the Commission's order:

"The question here is whether the three-bulk-cargo exemption from regulation of Sec. 303(b) of the Act, 49 U.S.C. Sec. 903(b), continues to apply to an originating unregulated carrier where during a portion of the through trip the movement is performed for the originating carrier by a regulated tower who physically intermingles barges carrying non-bulk commodities with the barges of the originating carrier carrying bulk commodities. The Commission determined that the inclusion of non-bulk commodities during any portion of the through trip placed the entire carriage outside the exemption of Sec. 303(b) and subjected the originating carrier to Commission regulation. As we analyze the Commission's ruling we are convinced of its correctness and accordingly, it is sustained." [258 F.Supp. 864, 866.]

The proposal now advanced by the Commission would permit the mixing in a single tow of any number of bulk commodities with any number of nonbulk commodities, for the whole or any portion of a trip, without loss of the exemption as to three of the bulk commodities; and it would permit such unlimited mixing whether or not there should be participation by a "regulated tower" for some portion of a through movement. Furthermore, it would appear to allow more than three bulk commodities to be carried in a single barge without loss of the exemption as to three of them.

Thus the Commission's substitute proposal overreaches the practices dealt with in W-C-5. This was the view also of the Chairman of the Interstate Commerce Commission in 1962. Testifying before the Transportation and Aeronautics Subcommittee on a bill containing language identical with that now proposed anew by the Commission, Commissioner Rupert L. Murphy said:

"This measure, however, appears to go beyond the practices dealt with in docket No. WC-5. . . . This language would evidently allow more than three bulk commodities to be transported in the same vessel without the complete loss of the exemption. That is, three bulk commodities would be exempt no matter

how many were being carried at the same time." [*Water Carrier Bulk Commodity Exemption*, Hearings on H.R. 9046, et al, 87th Congress (Second Session), p. 14.]

To my mind, the following amendment of the bulk commodity exemption would accomplish the limited purpose of overturning the W-C-5 rule, as opposed to the broad-brush approach suggested by the Commission:

"Subsection (b) of section 303 of the Interstate Commerce Act [49 U.S.C. 903(b)] is amended by inserting after the third sentence thereof the following new sentence: 'The towage, subject to the provisions of this part, of commodities in bulk for a portion of a through movement of such commodities under a contract of affreightment, performed concurrently with the transportation of other commodities in bulk or commodities not in bulk, or both, shall not prevent the application of this subsection to a prior portion of the said through movement of such commodities in bulk during which the cargo space of the vessel in which they are transported is being used for the carrying of not more than three such commodities.'"

This is the same language I submitted to the Subcommittee two years ago. See *Water Carrier Mating Rule Exemption*, Hearings on H.R. 7610, 90th Congress (First Session), p. 145.

To make certain that there will be no misunderstanding let me emphasize that the substitute language I have suggested in this letter, and am submitting at the Subcommittee's request, is not an acceptable alternative to the basic position of the Association of American Railroads on the pending bills. Our firm position, for the reasons stated and elaborated upon at the time of the hearing, is one of vigorous opposition to H.R. 8298 and the other bills on this subject unless so amended as to extend to the railroads an exemption from regulation in the transportation of bulk commodities comparable to that enjoyed, and to be enjoyed, by the water carriers—thus giving the railroads equality of competitive opportunity with the water carriers in this respect.

Respectfully yours,

HARRY J. BREITHAUP, Jr.,
General Solicitor.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman. Mr. Brietraupt, I think you made it quite clear that the position of the railroads is that they are currently being discriminated against by the exemption already enjoyed by the barge lines and that the enactment of either of these bills would further compound that discrimination.

Mr. BREITHAUP. Yes.

Mr. DEVINE. As far as your association is concerned, do you prefer that this subcommittee and this committee do nothing and let the matter come into effect on July 1 as it is supposed to do and has been sustained by the Supreme Court?

Mr. BREITHAUP. We have two positions: Either we would prefer for the subcommittee and the Congress to decline to enlarge the exemption, or, if it feels inclined to enlarge the exemption, to extend a comparable exemption to the railroads.

Mr. DEVINE. I understood in your discussing this with the chairman as it relates to the amendment submitted in behalf of the Interstate Commerce Commission yesterday as an alternative, that you hadn't had opportunity to study it sufficiently.

Yet, you pointed out that an identical amendment was offered in 1962.

Did your association take a position as it related to that amendment at that time?

Mr. BREITHAUP. We opposed it.

Mr. DEVINE. I presume your position remains the same today?

Mr. BREITHAUP. Yes. While the substitute proposal advanced yesterday by the Chairman of the Commission would perhaps broaden the

exemption less than the bills pending before you, it would still broaden the exemption.

So, all of the arguments that I have tried to advance would still be sound, in my judgment. We would be opposed to any aggravation of the existing discrimination.

Mr. DEVINE. Finally, do you sincerely feel that the clause to which you made reference in, shall we call it the Stanford study, is knocked out of the box entirely on the basis of a false premise?

Mr. BREITHAUP. As I read it, he proceeded on the assumption that compliance with the mixing rule—in other words, doing what would have to be done if you don't act by July 1—resulted in the separation of bulk and regulated cargo.

I say that bulk cargo doesn't have to be separated from regulated cargo, if you regulate the bulk cargo and leave it in the same tow. I can't read it any other way.

Mr. DEVINE. I just wanted the record to be made clear.

Thank you, Mr. Chairman.

Mr. FREIDEL. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Breithaupt, interestingly, you point out the cost to you for the acquisition, and of course, the construction and the maintenance of your rights-of-way and, of course, at the same time the taxes that you paid and the trucking industry likewise have to pay user taxes, or at least gasoline taxes and such as that.

Apparently the water carriers—are you familiar with any user charges that they have to pay insofar as the waterways are concerned?

Mr. BREITHAUP. There are none.

Mr. WATSON. So, of course, the only property taxes they would have to pay would be on the equipment itself.

Mr. BREITHAUP. I suppose they have some land-based facilities, docks, et cetera.

Mr. WATSON. I believe the Chairman of the ICC stated—I don't want to misquote here—that insofar as they were concerned, if you are going to enact these bills, before you were to enact them they would rather just to strike out or exempt all bulk commodities altogether.

Do you recall her position on that?

Mr. BREITHAUP. My recollection was the contrary of that, Mr. Watson. I believe the long-standing fundamental position of the Commission, and as I understood her to reiterate before you yesterday, is that they would prefer to repeal the exemption for everybody.

Mr. WATSON. Repeal all exemptions and regulate all bulk?

Mr. BREITHAUP. Yes.

Mr. WATSON. I assumed that this problem is becoming more pronounced daily with the demand that we go to volume shipments. Back in 1939 labor wasn't so much of a problem but now with the high cost of labor and, of course, I am not arguing against that, it is necessary for companies to grow bigger and for the volume of the commodities to enlarge in order that you might ship them economically. That is the thing that aggravates this particular area of bulk commodities.

Mr. BREITHAUP. A major feature of it would be the technological development in the motor carrier industry and improvements in the

highway system, a lot of high valued shipments, if you will, weaned away from the railroads by the motor carriers.

This means that the railroads are increasingly dependent upon the bulk commodities as the backbone of their business. This is why you have seen the development in recent years of a greater emphasis in the railroad industry in handling bulk, such things as the unit train, designed specifically to carry bulk traffic more efficiently and more economically.

Mr. WATSON. You spell it out in your prepared statement, but if we might briefly state your position or the position of the American Association of Railroads, first you would prefer what, insofar as this particular problem is concerned, no action by the Congress or what? What is your first preference?

Mr. BREITHAAPT. My first preference, I would have to say, would be to have the Congress turn down these proposals.

Mr. WATSON. Your second alternative would be what?

Mr. BREITHAAPT. Conditioned upon the Congress not turning down these proposals—if you should decide to enact a bill such as these, our next position would be to amend that bill in such a way as to extend to the railroads a comparable exemption.

Mr. WATSON. That is right. In other words, if this exemption is granted that it be granted, of course, not only to railroads, but to truckers, so that all would be—

Mr. BREITHAAPT. I won't speak for the truckers. But I would have no objection.

Mr. WATSON. Certainly you wouldn't. You impressed me that you want us to do the fair thing. Wouldn't it be fair to treat the truckers alike? Or do we want to eliminate them? I guess we will hear from them later on.

Mr. BREITHAAPT. We will.

Mr. WATSON. I don't want this to be a dog-eat-dog proposition.

Mr. BREITHAAPT. The reason I don't want to undertake to speak for them is that they are in the room and even if you extended this to the railroad I don't know that they would want it. I would rather you ask them.

Mr. WATSON. There is the basic competition between you and the water carriers, seriously.

Mr. BREITHAAPT. Yes.

Mr. WATSON. Somewhere down the line insofar as you are concerned you would have no objection with the elimination of bulk commodities altogether from regulation.

Mr. BREITHAAPT. Eliminate regulation as to bulk commodities?

Mr. WATSON. That is right.

Mr. BREITHAAPT. That is correct.

Mr. WATSON. Would you object to the proposal of allowing exempt and nonexempt commodities to be sent or shipped together without the nonexempt coming under regulations as apparently is the case?

Mr. BREITHAAPT. No objection, so long as the same privilege is extended to the railroads.

Mr. WATSON. As afforded to railroads and truckers.

Thank you very much.

Mr. BREITHAAPT. Thank you, sir.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. It is good to have you here. Let me say that I want to make it quite clear that I always expect every man to stand right in front of his own objection to keep it from being gored.

So, I realized that is the reason you are here. I respect you for it.

Mr. BREITHAAPT. Thank you.

Mr. KUYKENDALL. Did you ever know of a carrier to ask for regulation of anything he ever carried, seek regulation? Did you ever know of a single carrier of anything, at any time, to seek regulation?

Mr. BREITHAAPT. Yes.

Mr. KUYKENDALL. Very often?

Mr. BREITHAAPT. No.

Mr. KUYKENDALL. So I think it is a little bit too much to expect the bargelines to ask for a regulated item that is not regulated now. Don't you think that is a little bit too much? You said all they had to do to get out from under this statistical report that the gentleman from California presented yesterday was to regulate themselves.

Mr. BREITHAAPT. That is correct. But the present law requires that.

Mr. KUYKENDALL. You say all they have to do to comply to make this report, you might say, irrelevant would be to regulate it themselves. I say that is a little bit too much to expect.

Mr. BREITHAAPT. The statute already does it.

Mr. KUYKENDALL. They have the authority to, but you are asking them to do it.

Mr. BREITHAAPT. The Supreme Court has said they have to do it.

Mr. KUYKENDALL. Let's get into something here, sir. You know, I resent just quite the lengths that we go to to try to present these people as being lawbreakers because if they were that much a lawbreaker it would seem like you would call the cops and get an injunction.

They have got some allies on their side. They have to have or they wouldn't have been getting relief after relief all of these years. I know a whole lot more railroad people than I do barge people. I have got a whole lot more railroad friends than I have barge friends. There are at least 20 times as many railroad employees in my district as barge people.

So that being the case, how is it that this little group of people called the barge lines can hold off this massive army for so long? It doesn't make sense if there isn't another factor, namely, the public interest that think the barges have a pretty good case.

Mr. BREITHAAPT. I agree with you.

Mr. KUYKENDALL. I wanted to make that clear.

There is another factor here called the public interest.

Mr. BREITHAAPT. That is right. I would like to remind you that in this delayed application of the compliance order of the Commission, the railroads have expressly acquiesced in that delay.

Mr. KUYKENDALL. I realize this. Sure they have fought day after day, week after week, to get these extensions and suspensions. But I don't consider when someone is operating under a suspension that he is a criminal, that he is breaking the law. He has got a suspension of the law and therefore doesn't have to comply yet.

Mr. BREITHAAPT. If I left the contrary impression I apologize to you and to them.

Mr. KUYKENDALL. I think this impression has been left very strongly ever since I have been in the Congress.

Would you say that the cost of hauling a ton of wheat from St. Louis to New Orleans was less than the cost of hauling a ton of freight from St. Louis to Denver, say, if the distances were identical—the ton-mile cost?

Mr. BREITHAUP. For the same commodity?

Mr. KUYKENDALL. On a ton-mile basis.

Mr. BREITHAUP. The same commodity and the same distance, one on the river and one on the land?

Mr. KUYKENDALL. No, on a parallel river route on your railroad and one on a nonparallel river route on the railroad.

Mr. BREITHAUP. I can't answer that because not all railroads—in general, yes, sir.

Mr. KUYKENDALL. Is it not true that we have bulk rates that have been granted to the railroads at their own request—in fact, one of the leaders in seeking this out is one of our own southerners of course and he has been a leader in this field.

Is it not true that the railroads are consistently granted competitive rates along river traffic?

Mr. BREITHAUP. That is true.

Mr. KUYKENDALL. You are not losing money, are you?

Mr. BREITHAUP. We are trying not to.

Mr. KUYKENDALL. They are not losing money. So, I think we have a competitive situation, do we not, granted by the ICC to you so you can compete effectively?

Mr. BREITHAUP. Not really granted, but not interfered with.

Mr. KUYKENDALL. Don't you have to get their approval?

Mr. BREITHAUP. No, we file them.

Mr. KUYKENDALL. It is an acquiescence.

Mr. WATSON. Will the gentleman yield at that point, because I think we can keep it in context.

I notice you point out on page 3 that when you file these rate changes that unless there is protest made within a certain period of time they become effective. You point out that indeed complaints may be made by the competing bargelines themselves.

I grant you that such could be done as a practical matter. Has it been done?

Mr. BREITHAUP. Frequently.

Mr. WATSON. It has been done?

Mr. BREITHAUP. Yes.

Mr. WATSON. You have made applications?

Mr. BREITHAUP. We have filed tariffs and the bargelines have complained about the rates being too low and have protested to the Commission. In some instances, they were successful and they are suspended. In other cases, the protests of the bargelines after being considered at a certain level of the Commission are rejected. In other instances, the rates are permitted to go into effect, but at the insistence of the barge lines an investigation is started and continues over a period of time.

At the conclusion of that investigation, rates may be approved by the Commission, or rather the Commission may decline to interfere with the rates, or the Commission may order the rates canceled.

Mr. WATSON. Since you had used the words "may be made by the competing bargelines," I had assumed that such had not been made and the fact that such protests have been lodged in my judgment, it takes on added significance to the problem that we have here. Because you indeed are placed in an impossible situation; if that be such.

Mr. BREITHAUP. Intolerable at least.

Mr. WATSON. I would go even impossible. It might be intolerable now, but impossible if that be true. I am rather astounded to hear that.

Mr. BREITHAUP. So that the record might be clear, I would revise this sentence in my prepared statement at page 3 to read, "Such protests and complaints may and indeed are made——"

Mr. WATSON. You can understand when I concluded as I did.

Mr. BREITHAUP. Yes. It is poorly written on my part.

Mr. KUYKENDALL. May I take it a step further?

Complaints are cheap. What does the ICC do about them?

Mr. BREITHAUP. The most well known case of this kind, although——

Mr. KUYKENDALL. Do you have an example of a rate that you had published ever being rejected?

Mr. BREITHAUP. Yes, sir. In the celebrated Ingot Molds case, which was decided by the Supreme Court in the last term after coming up from the district court in Louisville, involving combined highway and water movement of a commodity known as Ingot Molds, the railroads published rates to try to get a share of that traffic. The rates were attacked primarily by the bargelines.

We prevailed in the district court, but the Supreme Court overturned it.

Mr. KUYKENDALL. To bring this situation, for the sake of the record, into a lot better perspective—we are talking about the size of shipments—I think the matter of regulating and deregulating a commodity actually is not the thrust of this amendment or not the thrust of this bill. It is certainly not intended to be.

The average barge tow contains over 20 full freight trains.

Do you sincerely believe that you could expect a bargeline to operate by having only three commodities in 22 freight trains? I am sure you would have a very difficult time doing that.

Mr. BREITHAUP. We do it.

Mr. KUYKENDALL. Do you mean line up 22 freight trains and not put but three commodities in them?

Mr. BREITHAUP. We just regulate everything in them.

Mr. KUYKENDALL. The matter of regulation or deregulation is up to the ICC. I am not asking the barge lines to voluntarily regulate themselves.

The question is can they operate? You couldn't operate if you had to put that few items in that much freight. The public interest, the idea of cutting freight costs, and I think we must realize that the only possible competitive advantage that a barge has is price.

I spent 11 years of my life in Memphis, Tenn., with a heavy traffic business that I had control of. I had a plant in St. Louis and one in Dallas.

For your information, I hauled everything from Dallas, not St. Louis because I had barges up and down the river and I had rail-

roads from Dallas and I used the railroads because they were cheaper, actually cheaper by the ton.

This is a little experience that I have had that bears out the fact that there are unusual rates that the railroads do have the ability to offer. But I certainly—even at the same price or maybe at 2 percent higher—couldn't have used the bargeline because I required service.

You gave me service, the railroads did. The trucklines' price was such that I couldn't quite afford to pay that much more for that much better service. But the bargelines were eliminated on the front end because they couldn't give me service. Price is all they had to offer.

I think it is important in the perspective of this thing and the reason that the public interest, meaning the public pressure on the Congressmen, from the cities and from the industries and all of these people involved the reason that this pressure has come up, and kept, what to you gentlemen in the railroads, I am sure, seems like such an obvious case, and as a lawyer it would seem awfully obvious that this case is pretty obvious, speaking strictly as a lawyer, but when you throw the public interest in, it gets to be a pretty sticky wicket.

So, do you know of any other advantage that the bargeline has, except rate?

Mr. BREITHAAPT. They have the advantage of being able to charge the shipper a much lower price because of the absence of any user charges. That is right, they have an advantage of cost to the shipper.

Mr. KUYKENDALL. No way in the world you can charge them because that river flows downstream.

Mr. BREITHAAPT. No.

Mr. KUYKENDALL. The subject of their paying additional taxes is a different subject.

Mr. BREITHAAPT. It is.

Mr. KUYKENDALL. It is a different day at a different time.

I have one last question. I think you all know, you people in the railroad industry, that any time the subject of total deregulation comes up in the railroad, they reach back in the back closet and pull that old skeleton out and throw it down in front of you called predatory competition.

I am sure you have lived with that term. So, I ask you this: If you deregulated bulk on railroads, would you be willing to accept a rule that said that you had to charge the same amount per ton-mile from St. Louis to Denver as from St. Louis to New Orleans, meaning that you did not use predatory competition on the parallel barge routes?

Mr. BREITHAAPT. That is two different questions. It doesn't necessarily mean predatory competition.

Mr. KUYKENDALL. What is to keep you from cutting your rate below cost up and down the river and pay for it out of your rates you collect across country? What would there be to prevent this from happening?

It is something I have sought out as a means of trying to look at this thing. I like deregulation myself.

Mr. BREITHAAPT. I assume that you are immediately thinking in your own mind that the antitrust laws do not cover it.

Mr. KUYKENDALL. They are after the fact.

Mr. BREITHAUP. You may not agree with my answer, but I will give you a twofold answer. I think in their own self-interest, first, the railroads wouldn't do this because we live in a day of pervasive competition, of comparative ease of entry, into the transportation business.

You heard it said before you yesterday that the bargelines permeate 5 miles inland, perhaps. I don't know what exactly was meant. I suppose it meant a combination with highway transportation.

I think in our own self-interest we would not want to invite the kind of competition that would come in should we raise the rates for our inland shippers to the point where the motor carriers could come in and take the traffic overnight.

Perhaps more important than that, what conceivable advantage would it be to the railroads to dry up their inland shippers? We are interested in the preservation and protection of those shippers as a source of business to us. We are not interested in bankrupting them and not interested in having them pull up stakes and move on the river where they would become easy targets for the bargelines.

So, our own self-interest and the interest of our shippers, I think, provide the answer to your question.

Mr. KUYKENDALL. Two years ago I spent considerable time working with our friends in the railroads trying to determine some way to present to the Congress and to the general public some sort of an idea that this vast economic power of the railroads compared to the relatively small economic power of the barge companies—sure, some of the bargelines are big. But compared to the vast economic power of the railroads they are really peanuts.

I found in my dealing with the other members of the Congress and with the general public that no matter how insane you think the idea of predatory competition is, the general public is still very much afraid of it.

Thank you, Mr. Chairman.

Mr. FREIDEL. Mr. Breithaupt, I want to ask one question.

On page 2 of your statement, in the third paragraph, you say, this proposal would have a most adverse competitive effect upon the railroads unless the railroads are at the same time given the similar exemption.

I am emphasizing the word "would". What has been the competitive picture up to the present time?

Mr. BREITHAUP. The point I am trying to make here, Mr. Freidel, is that we already suffer a severe competitive and discriminatory handicap, and the proposal now before you would increase that disadvantage.

Mr. FREIDEL. Would increase it?

Mr. BREITHAUP. Yes.

Mr. FREIDEL. In what way?

Mr. BREITHAUP. By broadening the scope of the services that might be performed by the water carriers free of regulation.

Mr. FREIDEL. We know they have been violating the present law.

Mr. BREITHAUP. I have been lectured about that. I don't want to say they have been violating the law. But, they have been conducting their operations in a way that the Commission and the courts don't feel is consistent with the statute enacted by the Congress.

In any event, Mr. Chairman, what we are saying is that if these bills that the bargelines are supporting before you should be enacted by the Congress, the effect will be to give the bargelines even a greater exemption than that which they enjoy today and, consequently, our competitive situation will be worsened.

Mr. FRIEDEL. As I understand it, the bills would preserve the status quo. What they are doing today would not be expanded.

Mr. BREITHAUP. No, the substitute bill presented by the Commission yesterday is designed, we are told, to maintain the status quo. But by the admission of everyone, including Mr. Hershey and I think Mr. Mechling, the bills that are actually pending before you with numbers on them would go further than maintaining the status quo. They would enlarge the exemption over and above a mere reversal of the decision of the Commission in WC 5.

Mr. FRIEDEL. They would go further than preserving the status quo?

Mr. BREITHAUP. I think that was conceded by Mr. Hershey yesterday.

Mr. FRIEDEL. Mr. Dingell?

Mr. DINGELL. I am curious. Have you commented on the bill that was suggested to us by the Interstate Commerce Commission?

Mr. BREITHAUP. I have. But I would be happy to repeat my comment in brief, if you would like.

Mr. DINGELL. Do you feel that it goes further than a rollback to what the barge lines would assume to be the existing practice?

Mr. BREITHAUP. I have some doubt for the reason, and I cited it for the record, that the precise language submitted by the Commission yesterday was before your subcommittee in 1962 as H.R. 9046 of the 87th Congress.

At that time, in hearings before your subcommittee, the then Chairman of the Interstate Commerce Commission, Chairman Murphy, had this to say about the precise language that the Commission submitted yesterday:

This measure, however, appears to go beyond the practices dealt with in Docket No. WC 5.

In light of that, which I came across last night in preparation for today's hearing, I want to think about it some more. I am not prepared to say today. I had promised the Chairman of the subcommittee that after thinking about it some more I would submit my views.

Mr. DINGELL. I think it would be helpful.

I have read your statement by the way and it is an excellent one.

Mr. BREITHAUP. Thank you.

Mr. DINGELL. Can you indicate to us the specific results on railroad competition, if this bill is passed, particularly dealing with the repeal of the mixing rule? Give us an example of what would happen.

Let's take a stretch along the Missouri, Ohio, or Mississippi and give us an example in terms of cash money or volume of carriage that would affect the railroads if this bill is passed.

Mr. BREITHAUP. I can give you the nature of the competition, but I can't give you the quantum. I will tell you why: On the basis of the—when I am through you will understand—ICC figures for the most recent available year, 1967, some 67 percent of all railroad tonnage

consisted in general of the type of dry bulk commodities that are involved here.

We are talking about such things as field crops, including grain, metallic ores, coal, nonmetallic minerals, various types of chemicals, cement, coke, waste, and scrap. Those are the principal ones.

Sixty-seven percent of all railroad tonnage is comprised of those things. This is not to say that 67 percent of all railroad tonnage is competitive with the bargelines, for a number of reasons.

We are generally not competitive with the bargelines unless the railroad track parallels the waterway. So automatically the 67 percent is reduced a good bit.

In addition to that, even where the railroad right-of-way or operation parallels the waterway, certain types of commodities are not the subject of competition, particularly low valued commodities or particularly those as to which the service characteristics of the waterlines are more attractive to the shipper than the higher priced rail service would be.

So, for those reasons, it is impossible to say how much cash is involved. I do know that a tremendous amount is involved. One reason we can't give you any specific figure is that we don't know exactly what the bargelines are carrying and how much of it they carry.

Not only are they free of requirements with respect to rate regulation, they are free of any reporting requirements as to these particular commodities. They report to no one.

It is true that the Army Corps of Engineers, on an annual basis, makes some estimates of what moves up and down the rivers. I am unable to say with what accuracy this is done.

Admittedly, they are estimates. But for the year 1966 on that segment, for example, of the Mississippi River from the mouth of the Ohio River down to, but not including, Baton Rouge, La., obviously a place where rail and water could be competitive, wheat movements in that year on the basis of short tons in that one segment of the Mississippi River amounted to 2,292,970 short tons.

Grain moving on that segment of the Mississippi is the object of intense competition between the railroads and the bargelines.

Is that helpful at all?

Mr. FRIEDEL. Will the gentleman yield?

Yesterday there was a question about the shortage of freight cars. Maybe that is the reason why the bargelines are carrying more wheat.

Mr. BREITHAUPT. We still compete for it. I know what is being said in the press, in the Congress and in the letters and telegrams you receive about the freight car shortage. I don't dispute it. I appreciate your comment.

Mr. DINGELL. I am still troubled. I would like to get this reduced to a fairly simple example of what this thing is going to do in terms of a competitive situation with the railroad. I think you and I could make the fair inference that when you eliminate the mixing rule, you are going to make an enormous change in terms of the competitive position of these people.

What I am trying to figure out is what will this do for example, to the grain carriers, to the question of coal haulage, what will it do with regard to scrap, with any of the particular commodities where this kind of a change would take effect?

Mr. BREITHAUP. Yesterday, you and other members of the subcommittee, Mr. Dingell, interrogated Mr. Hershey and his associates, at some length as to what was going to happen on July 1 in the event that the subcommittee does not change it.

Here is a man who is chairman of the board of one of the big barge lines, flanked on both sides by his associates, and you put the question to him and I can't answer it any better than he could.

Mr. DINGELL. I wasn't able to be here. I was on another committee.

Mr. KUYKENDALL. Would the gentleman yield?

Mr. DINGELL. Yes, I would be happy to.

Mr. KUYKENDALL. Is there any reason that since we are operating under a suspension now and are doing all of these things that the railroads are so afraid of being done—I don't think there is anything that is not being done now, is there?

Freely mixing, putting the average number of bulk items in a tow is around seven or eight?

Mr. BREITHAUP. I heard that testimony, yes.

Mr. KUYKENDALL. So, if they are operating that way now, being allowed to continue to do the same thing they are doing now wouldn't change any rates, would it? Why would it?

Mr. BREITHAUP. I have tried to say rather forceably—

Mr. KUYKENDALL. I think this is what Mr. Dingell is talking about here.

Mr. BREITHAUP. We object to the maintenance of the status quo.

Mr. KUYKENDALL. I know you do. But the question has come up as to what happens to rates if all of this long, drawn out bunch of suspensions is finally withdrawn and I will use it this time, as you say, the law is enforced. What happens then?

Mr. BREITHAUP. Mr. Hershey said to you, and I will undertake to quote Mr. Hershey, and if I am wrong I will ask the chairman or one of his associates to correct me.

After a long discussion yesterday afternoon as to what the effect of this would be on the rates of the barge carriers Mr. Hershey finally and reluctantly said that he guessed it would call for an increase of 10 to 15 percent. He then, as I recall asked Mr. Mechling to comment upon Mr. Hershey's estimate.

I must say that I don't remember that Mr. Mechling disagreed.

Mr. KUYKENDALL. To turn the coin over on the other side, there is absolutely no reason, is there, to assume that if our bill were passed and put into effect, that rates would be lowered, is there, since they are operating now as the bill authorizes them to operate?

Mr. BREITHAUP. No, everybody concedes that bill H.R. 8298 which is Mr. Kuykendall's bill, would make it possible for the bargelines to do things that they are not doing today. It goes further.

Mr. KUYKENDALL. Cannot the large bargelines right now under their present operating practices put as many commodities as they want to in a tow? Aren't they doing it?

Mr. BREITHAUP. Only under towage contracts rather than contracts of affreightment.

Mr. KUYKENDALL. I am not talking about technicalities. I am asking are they doing it.

Mr. BREITHAUP. A mixture is occurring under certain circumstances. It is kind of a device.

Mr. KUYKENDALL. A mixing is occurring that has rates set at a certain level.

Mr. BREITHAAPT. These are not commodity rates.

Mr. KUYKENDALL. That, I think, determines how much you are going to charge, how much it costs you to operate.

Mr. BREITHAAPT. That is true.

Mr. KUYKENDALL. I still don't see any basis in the whole piece for assuming that rates are going to go down.

Mr. BREITHAAPT. The rates are going to go down?

Mr. KUYKENDALL. If my bill is passed.

Mr. BREITHAAPT. I don't make rates for the barges, Mr. Kuykendall. I can't answer you.

Mr. FRIEDEL. The gentleman's time has expired.

Mr. Pickle?

Mr. PICKLE. Since the chairman has left a clear inference that time is of the essence, I will make my questions brief.

What is your personal opinion about the statement made yesterday from the gentleman from Texas that if this exemption were removed that freight rates would go up to 10 to 15 percent? Do you think that is an accurate estimate or do you have figures?

Mr. BREITHAAPT. I have no figures and I have no way to assess its accuracy. Mr. Hershey is in the barge business and we are not. If this is his best guess I give it a great deal of credence. I have no reason to disagree with him.

Mr. PICKLE. You said earlier, and you gave us an example in the *Ingot Molds* case, that you had published a rate and a complaint was made to ICC and they refused to approve the rate.

Mr. BREITHAAPT. The rate was attacked by the water carriers, and others, and the end result of the litigation was that the Supreme Court knocked the rate out.

Mr. PICKLE. How many times has that happened to you?

Mr. BREITHAAPT. The attacks are made with considerable frequency. It very rarely goes as far as the Supreme Court. I can't give you the percentage of cases that actually develop into any kind of a contest at the ICC.

Mr. PICKLE. Are these complaints a problem to you in your area of operation?

Mr. BREITHAAPT. We consider them a serious problem.

Mr. PICKLE. Yesterday, the statement was made that by comparing the two industries, that there was in effect unfair competition if you made the barge operate on the same competitive level as the railroad, namely, that the barges have an income annually of somewhere in the neighborhood of \$400 million as compared to the railroads revenue income of some \$10 billion.

Isn't that an unfair matching or unfair competition on the face of it?

Mr. BREITHAAPT. I am not prepared to say that large financial resource makes for unfair competition. I think the whole American business is permeated with that. I don't think really, Mr. Pickle, that you mean that the way it seems to come out.

Do you think it is unfair competition for a large business to be in competition with a small grocery store?

Mr. PICKLE. I think we have many laws on the books today that are designed to curtail the operation of big business and in certain instances in an effort to protect the smaller merchants. This is not unusual at all.

Mr. BREITHAUP. That is true.

Mr. PICKLE. I assume that you feel in making the claim for an equal exemption in this particular measure that there are reasons why this is not unfair competition over and above just volume.

What is the reason? Do you have other operating costs that barges don't have? What do you claim are reasons why you should be given this same exemption?

Mr. BREITHAUP. Because our efforts to compete for the traffic here in question are impeded and are hindered by reason of the fact that we are subject to rigid and comprehensive regulation at the hands of the Interstate Commerce Commission and the barge lines are subject to no regulation at the hands of anyone except as the antitrust laws may apply.

Mr. FRIEDEL. Will the gentleman yield?

Mr. PICKLE. I yield.

Mr. FRIEDEL. When you ask for the same exemptions as are asked for the bargelines, would you ask for exemptions on the full system of the railroads, or just where they parallel the waterways?

Mr. BREITHAUP. Our proposal made to you is systemwide and not limited to the parallel situation that you mentioned. I have heard the suggestion you apparently have in mind advanced before and have given superficial thought, at least, and perhaps more thinking than that, as to how such a statute might be drafted or how such a scheme might be implemented.

Frankly, I have not been able to think of a way in which it might feasibly be done.

Mr. FRIEDEL. It would be very hard to get an exemption for the railroads throughout the rail system for the entire United States.

Mr. BREITHAUP. It might be. I just don't know how you could do it. Maybe you can't do it that way, but I don't know how it can be done any other way.

Mr. FRIEDEL. Give that some thought, too.

Mr. BREITHAUP. I shall.

Mr. PICKLE. I want to conclude the line of reasoning that I was pursuing.

Does the railroad pay for operating right-of-ways?

Mr. BREITHAUP. Yes. All of our right-of-ways are paid for by the railroads and are maintained by the railroads. They also pay taxes on those rights-of-way. These are expenses that the bargelines don't have. They use what they refer to in their own statements as the "God given" rivers. They don't have to buy them.

As has been pointed out here, even though the waterways are improved for navigation by the taxpayers of this country to the extent of billions of dollars, and are constructed, maintained and operated by the Army Corps of Engineers and others, there is not one cent, not one mill, of user charge assessed against either the water carriers or their shippers.

Mr. PICKLE. I will not pursue this any further except that I will be interested in reading the letter that you submit to the committee with respect to your views on the amendment offered by the ICC.

Did it go beyond the Mississippi question, and generally how do you feel about ascribing to the approach of published rates. This may be the approach. This is in effect what they were saying as I took the amendment. I would like to have your reactions to this.

Mr. BREITHAUP. A full comment about the ICC's suggested substitute?

Mr. PICKLE. Yes.

Mr. BREITHAUP. I will submit that just as soon as I can (see p. 102).

Mr. NELSEN. Mr. Chairman, may I interrupt at this moment?

It is necessary for me to be out of town tomorrow. I presume you will be in session. Mr. Springrose of the Cargil Co. in my own State will be appearing as a witness. I would like to submit an introductory statement to Mr. Springrose's testimony when he does appear.

Mr. Chairman, I would like to submit this introduction which I hope can be made part of the permanent record. (See p. 130 for Mr. Springrose's statement.)

Mr. FRIEDEL. It will be inserted in the record right before he submits his statement.

Mr. Adams?

Mr. ADAMS. We got into a discussion yesterday at some length over whether or not there was a qualitative difference between the rails and the bargelines in competing for bulk commodities. I noticed that you state on page 4 of your statement a conclusion that they compete.

I have not heard any facts. I wondered if you have any kind of facts to give to us as to where you do compete with the bargelines. I asked the ICC yesterday and they could not give me any information as to whether you competed on a point-to-point basis at all.

So I am specific with you, Mr. Breithaupt, we suffer each year from a fantastic boxcar shortage in all the agricultural areas of America which indicates to me there is no intermodal competition over broad areas of the country in the moving of bulk transportation items, particularly in the agricultural products field.

Otherwise, the other modes of transportation would take up the slack and there would be an alternative to railroad transport. We don't have that. Every year we go through this.

Along the rivers, it has been my understanding that the railroads do not compete because the bargelines are less expensive on bulk commodities that don't have a time limit for delivery on them, and that as you move out from the rivers, the railroads move into a monopoly situation because the bargelines obviously can't reach them.

Through all the testimony last year and through the testimony so far this year, we simply get conclusions. I would like to know if there is from the information developed by your people or by anyone else, any sort of a factual survey of where there actually is intermodal competition, if it exists at all, between the bargelines and the railroads.

Mr. BREITHAUP. Yes, sir. This gives me some problem. But it doesn't entirely stump me.

In the first place, you asked for one example. Before you came in, I referred to a case decided by the Supreme Court of the United

States in the last term where the whole issue was one of intermodal competition on the commodity known as ingot molds between the railroads on the one hand and the bargelines in combination with the trucks on the other.

Mr. ADAMS. But now this you could handle very simply on a definition of bulk commodity type basis if you wanted to go into regulations of particular commodities, could you not?

Mr. BREITHAUP. I am not sure I understand that question.

Mr. ADAMS. I want to get at the underlying problem here which is how do you move the goods in America and frankly, I don't care, between each of you who is trying to divide this pie, as to which one of you gets it in a particular instance.

I am more interested in whether there will be some transportation available.

At the present time, during major sections of the year there isn't any transportation available or it goes into an awful horrendous fit as to who gets your limited number of railroad cars. We shuttle them back and forth and it is a big mess. I think that the bargelines and the others, if they can take up the slack which you can't supply, should do so.

When you get down to point-to-point competition, which every witness testifies about here, in conclusions, we don't know what it is. But we might establish for example point-to-point type commodity regulations that would apply equally to both of you. But when you say to me to give the railroads a bulk exemption because you are going to give some kind of a bulk exemption to the bargelines, because they are the same, I don't say that you are right. I say you are wrong because I think they are qualitatively different.

So, I am trying to get you to zero in on where they are the same is they are any place.

Mr. BREITHAUP. Let me make this effort to answer, Mr. Adams.

As recently as yesterday, I consulted with our statisticians and got the figures from ICC reports for 1967, the last year for which such figures are available.

On the basis of those figures, I learned that the railroads, as a whole, in the year 1967 transported a total of 1,408 million tons of traffic. Of that total, some 67 percent, speaking in round figures, was made up of the dry bulk commodities here in issue. I speak of such commodities as field crops, including grain, of metallic ores, of coal, of nonmetallic minerals, chemicals, and allied products, cement, coke, and waste and scrap materials. Those are the largest categories of dry bulk commodities here in issue.

Sixty-seven percent of all of the railroad tonnage is comprised of those dry bulk commodities. This is not to say, Mr. Adams, that we pretend to be competitive with the barge lines for 67 percent of our traffic. It will be obvious to you, sir, that we can be competitive, generally speaking, only in those instances where the rail operation parallels the river or waterway operation.

Mr. ADAMS. Right.

Mr. BREITHAUP. So, automatically, part of the 67 percent leaves the picture.

Mr. ADAMS. So, if you were given a bulk commodity exemption on the portion where there is no competition, it would in effect just leave you nonregulated, coal out of inland area, grain out of inland areas, all of these areas would not only be nonregulative, but noncompetitive.

Mr. BREITHAAPT. That would be the effect.

Mr. ADAMS. Let's get down to what you are talking about with the barge lines. How much? Where? What is your proposal as to how you want it handled?

Mr. BREITHAAPT. You mean my statutory proposal or the factual proposal?

Mr. ADAMS. The factual proposal.

Mr. BREITHAAPT. I am not sure I comprehend the question. May I go on a little bit further?

Mr. ADAMS. Will you agree with me that just to say we give the railroads a bulk exemption because the water carriers have got some exemption—you are dealing with apples and oranges. They don't fit. I am asking you what your proposal is. First I want you to establish that there is competition which must be handled and secondly, how do you want to handle it.

Mr. BREITHAAPT. We want to be exempt to compete on an equivalent basis with the bargelines.

Mr. ADAMS. Where do you have it and how do you want to do it?

Mr. BREITHAAPT. The only way I know to do it is to write into part I of the Interstate Commerce Act, which is our regulatory statute, an exemption comparable to that written in part III of the Interstate Commerce Act, which covers the bargelines.

Mr. ADAMS. What is this? Tell me how you think it would work? You can give what you have to the bargelines because you can go any place and compete with them, but they can't run out through West Virginia or the Dakotas or Montana or Nebraska and compete with you.

So, you can't just say we will give you the same thing.

Mr. BREITHAAPT. I understand you now. Before you came in, I think, Mr. Adams, Mr. Friedel asked me whether my thinking was along lines of an exemption which would only apply to that traffic which was a parallel between the river and the rail.

I told him that I had given some thought to that in the past because I had heard a suggestion advanced perhaps by you, among others, Mr. Adams, that that might be the only way to even consider the matter and that up to this point at least, I have thought of no feasible way any such regulatory scheme could be devised.

Mr. ADAMS. What about overall publication point-to-point?

Mr. BREITHAAPT. By the barge lines and the railroads? It might have some possibilities. By both carriers?

Mr. ADAMS. What we are asking is—you gentlemen are all the experts—you deal in this every day, year after year. You know how these systems work and what doesn't work. We are asking you to tell us what the system or scheme should be and not give me conclusions at least that one, you compete, and second, that an exemption for railroads would be the same as for barge lines, because it is not.

I don't know qualitatively and quantitatively exactly why it isn't. I am asking you for a proposal. If you could submit on behalf of your people and we are asking the water carriers and the ICC people to do the same thing, something to define where the intermodal competition exists and then second, to tell us what is the proposal for making it fair between the two, then we have got something to operate on.

Otherwise, I can just say to you flatly that we are not going to go out and exempt the railroads 67 percent of their business from any regulation on bulk commodities when in a good portion of the country you have no intermodal competition. So, don't ask us to do something like that.

Mr. BREITHAUP. I have no present authority to ask you to do anything except that which I have asked you to do. I shall, however, return to my principals, convey your message, Mr. Adams, and the colloquy had with other members of the subcommittee.

If we can, we will make another proposal to the committee. I cannot promise you to make another proposal because I don't make all the decisions here.

Mr. ADAMS. I understand that. But I can tell you if you don't make another proposal there is going to be a lot of problems with your proposal.

(The information requested was not available to the committee at the time of printing.)

Mr. KUYKENDALL. May I ask another question?

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. To clarify the record on the subject of the advantages and disadvantages economically, and so forth, of the position of the barge lines and the railroads, is it not true, sir, that virtually, particularly now with mergers, and so forth, that on most routes within the United States, a railroad has a monopoly so far as rail traffic is concerned? I couldn't if I had \$1 billion go build a railroad.

Mr. BREITHAUP. I am not sure you would want to.

Mr. KUYKENDALL. I assure you I wouldn't want to. But anybody in the world that wants to go into the barge business can go into the barge business. I think that is probably one of the main differences to the situation.

Mr. BREITHAUP. Most anybody can go into the motor carrier business.

Mr. KUYKENDALL. But in your business this is not feasible?

Mr. BREITHAUP. This is not feasible, period.

Mr. KUYKENDALL. Thank you.

Mr. DINGELL. May I make one comment?

Mr. FRIEDEL. Yes.

Mr. DINGELL. I have been on this subcommittee for 5 or 6 years and on this committee for a dozen years. I have sat here year after year after year, and every time I have turned around there has been some industry in here telling us how the public interest would be served.

I have never heard anybody just from the ordinary public. I have heard very, very few from industry, other than the transportation industry, come in here and tell us how their affairs would be affected. I just have to say, Mr. Chairman, I am tired of sitting here as a member

of this committee and calling balls and strikes between competing interests that come in here and say, "The public interest will be served if we get this preferential treatment." And then somebody else comes in and says, "If you are going to give them that preferential treatment, you have got to give us this preferential treatment."

I think, Mr. Chairman, the very quaint nature of this legislation and the highly preferential basis of treatment that is being sought by one particular industry, the barge lines, pretty well points up the need for rigorous regulations for everybody. I don't intend, Mr. Chairman, to support any legislation that is going to deregulate or weaken effective regulations in the public interest.

Anybody that comes before this committee looking for that kind of preferential treatment is going to get pretty short treatment from me.

Mr. FRIEDEL. Thank you very much. Mr. Breithaupt.

Mr. BREITHAUPT. Thank you.

Mr. FRIEDEL. If it is all right with the committee, we will go until we have the first bell. We have 11 other witnesses. I would like to know if there is anyone here who would like to submit his statement?

We can't sit this afternoon. I doubt if we can finish up 11 witnesses tomorrow unless some of them can submit their statements.

(Statement of N. L. Caruthers follows:)

STATEMENT OF N. L. CARUTHERS, VICE PRESIDENT OF
CHOTIN TRANSPORTATION, INC.

My name is N. L. Caruthers. I am Vice President of Chotin Transportation, Inc. of New Orleans, Louisiana, which company is a non-certificated carrier of liquid and dry bulk cargo via barge on the Mississippi-Ohio River System, the Gulf Intracoastal Waterway and the Gulf of Mexico.

It is not my intention in appearing here today to burden the record with repetitious testimony but rather to attempt to emphasize the fact that all segments of the Inland Waterway Industry are united in support of the legislation which would modernize the phrasing of the antiquated 1940 I.C.C. Act with respect to the dry bulk exemption provided for in Section 303(b). This unity came about after lengthy debate and careful deliberation on the part of all types of operators.

Our company is a member of the American Waterways Operators, Inc. and we subscribe to their statement in full support of the bills you are now considering. This association along with others will or already have discussed the technological innovation on the inland waterways as well as the legal history of the bulk exempt section.

In the final analysis, the interpretations of the meaning of Section 303(b) by the I.C.C. and affirmed by the Courts have given rise to serious problems within our industry.

The final decision as to the application of Section 303(b) drastically limits the ability of the water carrier to put to full use the means already available to us in providing maximum efficiency.

Section 303(f) (2) of the Act provides for "incidental towage" whereby towing is performed by one carrier for another, and there has been an impressive growth of this type of business through the years. Some of the smaller carriers are engaged almost solely in this type of trade. Our company hires a considerable amount of towing from other water carriers and we perform a sizeable amount of towing for others.

The interpretation of the Act as it applies to existing legislation means that if an exempt carrier such as ours has cargo in one tow consisting of wheat, corn and soybeans (different species of grain have been ruled as constituting separate commodities) we cannot add to this tow another species of grain nor any fourth bulk commodity such as coal. We are completely denied the right

to perform incidental towing of a non-bulk commodity for a regulated carrier even though the lawfully prescribed tariff rate would be protected under the regulated carrier's bill of lading covering the movement. These artificial barriers to efficient operations are without logic.

The passage of the bills under consideration would simply update and modernize the outmoded and restrictive provision of the 27 year old act and we respectfully urge your Subcommittee to give prompt and favorable consideration to the enactment of the proposed legislation.

This legislation is of grave importance to our industry and I hope you will not conclude from the brevity of this statement that we consider it otherwise. I have simply attempted to avoid useless repetition.

Mr. FREIDEL. The meeting now will stand adjourned until tomorrow at 10 a.m. sharp.

(Whereupon, at 12:10 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, May 22, 1969.)

WATER CARRIER MIXING RULE

THURSDAY, MAY 22, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. Gentlemen, the subcommittee will come to order for continuation of the hearings on H.R. 8298, H.R. 8376, and H.R. 8509. They are all identical or comparable bills.

Our first witness this morning will be Mr. Ernest C. Ross, director of distribution, Swift Agricultural Chemicals Corp., Chicago, Ill., appearing for National Plant Food Institute.

STATEMENT OF ERNEST C. ROSS, ON BEHALF OF NATIONAL PLANT FOOD INSTITUTE

Mr. FRIEDEL. Mr. Ross, do you have a prepared statement?

Mr. ROSS. Yes.

Mr. FRIEDEL. Do you wish to summarize it?

Mr. ROSS. I would prefer, Mr. Chairman, if I could—it is brief—I would like to read it if I may.

Mr. FRIEDEL. You may proceed as you see fit, sir.

Mr. ROSS. My name is Ernest C. Ross. I am director of distribution, Swift Agricultural Chemicals Corp., with principal offices in Chicago, Ill. I have been authorized by Edwin M. Wheeler, president of the National Plant Food Institute, headquartered in Washington, D.C., to appear and present this statement on behalf of the Institute.

The National Plant Food Institute is a voluntary nonprofit trade association of the fertilizer industry. It has 125 members and 31 affiliated regional or State fertilizer associations. 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 H.R. 8298 or a similar bill 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 in the following table.

DOMESTIC BARGE TRAFFIC CALENDAR YEAR 1965

[In tons of 2,000 pounds]

Commodity No.	Commodity	Coastwise traffic	Lakewise traffic	Internal traffic	Local	Intra-territory	Total	Total domestic traffic
1471	Phosphate rock.....	2,438,812		632,960	23,678		3,095,450	3,732,279
1492	Sulfur, dry.....	11,424		144,858	34		156,316	294,162
1493	Sulfur, liquid.....	190,360		4,610,319	200,248		5,000,927	7,061,011
2814	Sulfuric acid.....	104,808		2,030,025	792,362		2,927,195	2,949,517
2871	Nitrogenous fertilizer and fertilizer materials, manufactured.....	42,692		151,270	15		193,977	197,006
2872	Potassic fertilizer materials.....	49,439		31,141			80,580	116,810
2873	Superphosphate.....	257,337		397,986			655,323	762,383
2874	Phosphatic fertilizer and fertilizer materials, n.e.c.....	127,737		67,977			195,714	208,360
2875	Ammonium sulfate, all grades.....	18,055		75,848		27,770	121,673	131,538
2879	Fertilizers and fertilizer materials, n.e.c.....	33,083		259,452	1,925		294,460	408,804
Total.....							12,721,615	15,861,870

Source: Table 10, domestic barge traffic, commodities by type of traffic, "Waterborne Commerce of the United States," calendar year 1965, pt. 5, National Summaries Department of the Army, Corps of Engineers.

I would like to say you will note there is tremendous amount of tonnage involved and that a substantial amount of freight is paid by the fertilizer industry, and naturally the consumer bears a great portion of that.

I might point out that our industry ships much more tonnage by rail than by barge and, as a matter of fact, a major portion or a lot of tonnage that moves by barge subsequently moves by rail or truck beyond the water point, in some instances this is in the same form and in other instances is an upgraded commodity.

These are the latest available statistics. The plant-food industry has been growing steadily and later figures would be even higher than those of 1965.

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.

For more than a generation those who ship by water on the inland waterways have had the benefit of mixed tows of exempt and regulated commodities. Section 303 (b) of the Interstate Commerce Act exempts from regulation commodities shipped in bulk when no more than three such commodities are shipped in the same vessel, a tow of several barges being considered a vessel. Mixed tows have been found to be unlawful and as a consequence it appears that the cost of water transportation on the inland waterways will be increased. A brief chronological review will be useful.

Water carriers first came under regulation in 1940. During World War II, in response to a request for a ruling, the Commission held that an exempt tow could perform incidental towage. As a consequence of this wartime interpretation of the law, bulk-exempt and regulated commodities were transported together in mixed tows.

In 1955 a case known as the Commercial Transport case was decided, and in that case the Commission reversed its World War II ruling and held that an exempt tow could not perform incidental towage of regulated cargoes.

Thus, for 15 years, the barge industry had been towing mixed tows of exempt and nonexempt commodities. If it were to obey, as it must, the Commission's ruling, it was now faced with the need to separate exempt from nonexempt traffic. The resulting tows would either be smaller or they would be less frequent. In any case the cost of doing business would go up and the service go down. It was a significant moment in the history of the water transportation industry. It was particularly significant because it was just at this time that improvements in technology were producing larger, more powerful towboats.

In the year 1938, the largest towboat on the rivers was approximately 750 horsepower. Some sternwheelers were still on the rivers. After the close of World War II, diesel engines began to appear, followed by the development of reduction gears. By 1955, the new towboats were being built with 1,000-horsepower engines, and it was obvious that economy of operation lay in the direction of larger towboats. In the period 1955 to 1960, horsepower grew to its present maximum of about 9,000 horsepower. The water-carrier industry therefore came to the conclusion that it would be economical to have large tows to go with the more powerful towboats just when the Commission was saying that tows must be segregated and made smaller. As a consequence, docket W-C-5 was filed.

W-C-5 was a docket number which the Commission assigned to a petition for a declaratory order. As an outcome of this petition, the Commission, in 1960, declared that it was unlawful to mix tows of regulated and unregulated freight. The issue was appealed, and in 1966 the U.S. District Court for the Southern District of Texas upheld the Commission. During that interval, the mixing of tows was permitted to continue, apparently in recognition of the important economic and technological aspects. In March of 1967, the U.S. Supreme Court, however, refused to review the decision of the lower court, thus, in effect, confirming it.

So after approximately a quarter of a century of having the benefits of mixed tows either with specific governmental approval or while awaiting the outcome of litigation, the plant food industry and the farmer find themselves again facing the seeming inevitability of the breaking up of large economical tows.

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 with the Supreme Court decision until July 1, 1969.

Should H.R. 8298 or a similar bill 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 tows 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.

I might point out here that my impression of the hearings of yesterday was that the railroads have no opportunity to compete with water transportation, because they don't know what the rates are. The one case discussed, I believe, involved a regulated commodity, not exempt, but in any event there are hundreds of rate applications filed every year by railroads for the benefit of railroads on a water-competitive basis and most are approved.

We also support that portion of H.R. 8298 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 H.R. 8298 or a similar bill.

Mr. FRIEDEL. I want to thank you, Mr. Ross. You made a very clear statement.

Mr. Kuykendall, any questions?

Mr. KUYKENDALL. You have no doubt whatsoever in your mind that the cost of doing business would increase if H.R. 8298 is not passed?

Mr. Ross. Any time you move smaller tonnage in one movement, the costs remain the same. There must be an increase in unit costs to handle the smaller amount of tonnage.

Mr. KUYKENDALL. Since the barge lines themselves, I am sure, are not making enough profit and the manufacturers of fertilizers are not making enough to absorb this, who will pay the bill?

Mr. Ross. It certainly is true that the fertilizer industry at this particular time is not having any particular high profits, and therefore the additional cost must be passed on to the consuming public.

Mr. KUYKENDALL. I think your testimony has best illustrated that the third party in this whole thing is the consumer, general public, and that is why it is so important.

Mr. Ross. That is correct.

Mr. KUYKENDALL. Lastly, looking at it in fairness to the rail industry, is there any reason whatsoever that if H.R. 8298 passes, that barge rates should be lower than they are today because of passing H.R. 8298?

Mr. Ross. On an immediate basis in my opinion there would be little change because the movements have been made in these larger tows in recent past and at the present time. We do not know what future development of technology we will have, but there should be no change at the present time.

Mr. KUYKENDALL. The special water-competitive rates the railroads are now receiving should be adequate the day after this bill is passed just as they would be the day before it is passed?

Mr. Ross. I believe the Commission has allowed many water-competitive rates and all that is necessary is to show (1) that there is actual water competition, and (2) resulting rates are compensatory.

Mr. FRIEDEL. Point to point or along the waterways?

Mr. Ross. There have been both. An example of one is a rate instituted to Norfolk, Va., this was a specific point-to-point rate on phosphate rock from Florida. This was before the ICC and in the courts for some time, but was finally approved. The publication of the phosphate rock scale of rates from Florida to the Midwest was an overall result of water competition of bringing a product up by water to intermediate points along the river and subsequent transportation out by rail or truck from the river.

As a result, a scale of rates was established by all rail movement that reflected the water competition but were in effect, available to the whole territory.

Mr. FRIEDEL. Thank you. Any other questions?

Mr. KUYKENDALL. No.

Mr. FRIEDEL. Thank you very much.

Our next witness is Mr. C. J. Harriss, vice president of Continental Grain Co., New York, N.Y.

STATEMENT OF C. J. HARRISS, VICE PRESIDENT, TRANSPORTATION, CONTINENTAL GRAIN CO.

Mr. HARRISS. Thank you. Continental Grain Co. wishes to go on record in support of this legislation.

In June of 1967, in connection with Senate bill 1314, then under consideration, I made a supporting statement before the Surface Subcommittee of the Senate Committee on Interstate and Foreign Commerce. I wish to repeat a portion of that statement:

Continental operate 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 U.S. We are comparatively very heavy shippers of grains, utilizing all modes of transportation . . .

We hold no favoritism for any mode of transportation of grain. Each mode (i.e., 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 the 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 technical 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 invent, 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.

Since that hearing, following failure of the Congress to pass the needed legislation, temporary permission has been extended to the

barging industry, permitting them to continue in the practices, as before, which were interpreted by the courts as being in violation of the IC Act, section 303(b), part 3. But the "permission" has been and still is temporary and always subject to a named time limit. This "relief" was presumably given in order to permit the Congress more time to pass needed legislation. But now, this temporary palliative is no longer acceptable, for the simple reason that the shipping public and the barge carriers cannot, until this matter is settled, plan ahead.

We urge you to promptly pass this legislation. Thank you.

I would like to add this: Since I have been here I had an opportunity to review a portion of Mr. Karl Ruppenthal's statement made to you here on the twentieth. In my own opinion, summarizing that statement particularly, I think, at the top of page 4 of the sheet I have here, it says merely this: that a regulated rate is a higher rate, and an exempt rate is a lower rate.

That is oversimplifying it, but the statement seems to indicate that to me.

I think it important to you gentlemen to remember the third party Mr. Kuykendall spoke of, the consumer. We are heavy consumers of freight. It is important that you try, to the best of your ability, to maximize the inherent transport advantages, to the end that the lowest possible freight rate, consistent with a profit to the carrier, be allowed to continue.

I also was in the room yesterday when the AAR testified. Assuming for the instant, and just assuming, that there is validity in their argument (as to the difference in regulations between the various modes) I want to say to you here and now that I think it terribly important that you pass this legislation that we are here supporting.

This other equality of regulation problem is obviously in everybody's mind; it is so complex that it is going to take time to work it out. I think it can be worked out, and I think it will be worked out eventually.

So even accepting the validity of argument on differences in competition, or difference in regulation of the various modes, it still becomes necessary you gentlemen pass this bill promptly. Thank you.

Mr. FRIEDEL. Thank you. Any questions?

Mr. KUYKENDALL. I have just one, and a statement, and I would like for all parties involved to be aware of one thing. I am very much in agreement with Mr. Harriss' observation that this is only part of a vast problem, and I want to go on record here and now that I support a comprehensive transportation act which will look at the overall picture of equity and fairness and equality for all modes of transportation. Let me say this: When we get into that act, some people who are quite happy with me now may not be so happy later on when we get into this business of an overall transportation bill.

I know the chairman feels the same way about it. I think this legislation is important in the public interest right now more than in any other mode of transportation. We will get into overall ramifications later.

Mr. HARRISS. I think that is a good summary of what I was trying to say, and said much better than I said it.

Mr. FRIEDEL. Our next witness is Matt Triggs, American Farm Bureau Federation.

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

Mr. TRIGGS. Thank you, Mr. Chairman. With your permission I would like to file our statement and take a minute to summarize it.

M. FRIEDEL. Your full statement will be included in the record. I appreciate this very much.

Mr. TRIGGS. The American Farm Bureau Federation respectfully recommends the enactment of one of the three bills before the committee. We believe that the bills are in the public interest. We certainly believe they are in the interest of those we represent.

The three reasons commonly advanced in support of the concept of regulation of transportation rates are these: to prevent excessive rates, to prevent rate cutting; to prevent discriminatory rates.

We do not believe that any of these purposes are accomplished by the regulation of rates for hauling dry bulk commodities. Under the circumstances existing in water carriage, competition performs these three essential functions better than regulation.

Now, we don't suppose that anyone would argue that railroads should be required to haul bulk commodities in one train and manufactured articles in another train, even if this were considered to be necessary to protect the competitive position of other modes of transportation; for example, pipelines. Nor do we see any more valid justification to impose uneconomic restrictions on water carriers.

We believe that the public interest would be served by permitting water carriers to operate their business in the most efficient manner.

Thank you very much, Mr. Chairman.

(Mr. Trigg's prepared statement follows:)

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

The opportunity to present the views of Farm Bureau relating to the "mixing rule" in inland waterway transportation is appreciated.

We respectfully recommend the enactment of legislation to reverse judicial interpretation: that if bulk and other commodities are mixed in a tow, the carriage of bulk commodities becomes subject to regulation.

At the last annual meeting of the American Farm Bureau Federation, the voting delegates reaffirmed their long-standing position in this respect by the adoption of the following policy position:

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 do not believe the regulation of inland water carriage of bulk commodities serves any public purpose.

Such regulation is not essential to protect the public against excessive rates because competition, including the competition of private carriers, is sufficient to prevent the imposition of excessive rates.

Such regulation is not essential to protect the concerns in the industry from "cut rate" competition, as evidenced by the satisfactory earnings position of concerns engaged in inland waterway transportation.

Such regulation is not essential to protect users against discriminatory rates, since the availability of competitive water carriers insures that any person adversely affected by discriminatory rates may seek service from another carrier.

On the other hand, restriction on the cargo that inland waterway carriers can transport in one tow is harmful to the public interest in that it compels less efficient practice.

The only argument that has weight appears to us to be the railroads' assertion that if their competitors are to be relieved of restrictions on the transportation service they are to provide, railroad too should have a comparable freedom of operation.

We support the elimination of restrictions on the rates that may be charged by railroads in the handling of bulk commodities. The following policy was reaffirmed at our most recent annual meeting:

We favor revision of rate making policy to eliminate minimum rate control for shipping agricultural or bulk commodities by all modes of a non-discriminatory basis, or such other revisions of law that will:

1. give emphasis to costs and competition as primary rate-making factors;
2. permit expeditious reduction in rates to reflect improved technology, and;
3. not discriminate against areas and commodities.

Thus, we will support a substantial degree of de-regulation of rail rates.

But, the issue before the Committee is not the whole issue of regulation, but only one small part of the whole issue. We must necessarily address ourselves to the issue before the Committee.

We do not believe that action in the public interest to correct the situation with respect to inland waterway transportation should be deferred until such time as the whole issue is resolved. We see no indication that the whole issue of regulation of transportation rates will have Congressional attention in the discernible future.

We therefore support the enactment of legislation now to preserve the opportunity of inland waterway carriers to best serve the public interest.

Mr. FRIEDEL. Thank you very much, Mr. Triggs. Any questions?

Mr. KUYKENDALL. No.

Mr. FRIEDEL. Thank you very much.

Our next witness is Mr. Springrose, who was introduced by our colleague Mr. Nelsen yesterday. Mr. Nelsen's introductory remarks follow.

Mr. NELSEN. Thank you, Mr. Chairman. I do not intend to take much of your time this morning because I know you have quite a list of witnesses who have asked to testify, but I want to introduce to you this next witness. He is Mr. James V. Springrose, vice president of Cargill, Inc., Minneapolis, Minn., one of Minnesota's leading companies.

Mr. Springrose is well known to the transportation industry as a leading authority on the transportation of agricultural commodities. He is a member of several professional organizations, including the American Society of Traffic and Transportation, the Interstate Commerce Commission Practitioners' Association, and the User Panel of the Transportation Association of America.

Cargill operates about 150 grain handling and processing facilities in the United States—one of which is located in my Second Congressional District in Minnesota. Port Cargill on the Minnesota River in Scott County, Minn., is a major grain market and commodities terminal for southern Minnesota, and is one of Cargill's largest and most efficient grain handling and terminal warehousing operations.

Cargo Carriers, Inc., is an affiliated company which operates terminal warehouses and a fleet of towboats and barges on the inland waterways.

I might comment that Mr. Springrose assures me that Port Cargill has come through the spring flood on the Minnesota River in great shape and resumed loading grain barges 2 weeks ago.

You will find Mr. Springrose's comments on the mixing rule very helpful, and I join my colleagues in welcoming him to these hearings.
 Mr. FRIEDEL. Mr. Springrose, please proceed as you see fit.

**STATEMENT OF JAMES V. SPRINGROSE, VICE PRESIDENT,
 CARGILL, INC.**

Mr. SPRINGROSE. Thank you, Mr. Chairman. I would also like to thank Congressman Nelsen for his introduction.

Mr. FRIEDEL. A very fine introduction, if I may say so.

Mr. SPRINGROSE. My name is James V. Springrose; I am vice president of Cargill, Inc., in Minneapolis, Minn. Cargill is an international agricultural commodities trading and processing company with headquarters in Minneapolis. We are the Nation's largest handler and processor of agricultural commodities. We are also one of the largest freight users in the United States, generating approximately \$120 million of freight per year, and of that figure approximately 80 percent is generated in railroad transportation. According to a Department of Commerce study in 1968, Cargill developed the second-largest contribution toward the favorable balance of payments at \$817 million. We don't know who No. 1 is.

We support the enactment of 8298 and the companion bills to amend section 303(b) of the Interstate Commerce Act. We do so because we feel the economic justification of the bill is substantial and it far outweighs considerations advanced regarding intermodal competition and allegations of unequal treatment under the Interstate Commerce Act.

Historically, Cargill has been a company dedicated to low-cost distribution of bulk commodities. In recent years, increasing emphasis has been placed on improving transportation efficiencies. Progress—for both agriculture and transportation—has been achieved through programs developed within the framework of present regulations and transport practices, including the practice of mixing.

One innovation that has brought about greater transportation efficiency is the rent-a-train concept that moves Illinois grain to the Louisiana gulf for export. Another innovation taking shape in bulk commodity transportation is a program to establish new railroad pricing methods and distribution patterns on grain from Rosalia, Wash., to Seattle. Both of these programs involve market competition with alternative supplies moving via water carriage. Both programs are being reviewed by ICC. Both projects have been delayed, but neither program has been delayed because of pending ICC proceedings.

From these and other experiences in railroad ratemaking, we have concluded that variances in regulation among the modes has not been a significant deterrent to competitive pricing so long as the specific programs being considered are economically sound and in the long-range public interest. This, we feel, is the case with the legislation now before you.

With specific reference to these bills, we believe the water-transport industry is an overbuilt industry. Competition among its members

is fierce, and for some these are difficult times. However, it hardly seems fitting to answer the competitive struggle within the barge industry or its indirect impact on other land modes by destroying the efficiencies inherent in any one segment.

For these reasons, we urge that you pass favorably on these bills.

Mr. FRIEDEL. I want to thank you very much for your very fine statement, Mr. Springrose. Any questions?

Mr. KUYKENDALL. I have a couple of quick questions. You are pointing out in your last paragraph about "the fierce competitive struggle within the barge industry?"

Mr. SPRINGROSE. Yes, sir.

Mr. KUYKENDALL. Would you say that probably the ability and the likelihood of such a fierce struggle that takes place within the industry is the main difference of the economic structure of this industry and rail industry? In other words, a railroad from point to point either has one rail line or, at the most, two competing from a point-to-point; railroads, of course, pay taxes, and the railroads have to get an ICC permit and at least they are not burdened with this thing you are talking about?

Mr. SPRINGROSE. Yes, sir; I think freedom of entry is the difference between the two.

Mr. KUYKENDALL. So you have advantages and disadvantages on both sides?

Mr. SPRINGROSE. Yes, sir.

Mr. FRIEDEL. Thank you.

Our next witness is a friend of mine of long standing, Mr. Earl Shepard, vice president of Seafarers International Union. Mr. Shepard you may include your statement in the record or you may want to read it, in full, or you may summarize it.

STATEMENTS OF EARL SHEPARD, VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO; PAUL DROZAK, UNION OFFICIAL, HOUSTON, TEX.; AND GORDON SPENCER, UNION OFFICIAL, NORFOLK, VA.; ACCOMPANIED BY MERLE ADLUM, UNION OFFICIAL, SEATTLE, WASH.

Mr. SHEPARD. I think it would be better if I read it.

Mr. FRIEDEL. Fine.

Mr. SHEPARD. It will not be long, and the time limit will be according to the questions that members might wish to ask.

Mr. FRIEDEL. Would you introduce the gentlemen with you?

Mr. SHEPARD. Very well. This is Paul Drozak from Houston, Tex., and Gordon Spencer from Norfolk, Va., and we have with us also Merle Adlum from the west coast.

I will make a short presentation, Mr. Chairman and Mr. Kuykendall, and then I would like to give the microphone to Paul Drozak first and then Gordon Spencer to follow that.

Mr. Chairman, my name is Earl Shepard. I am a vice president of the Seafarers International Union of North America, AFL-CIO. Our union represents American seamen serving aboard vessels in all phases of this Nation's waterborne commerce—deep sea, Great Lakes, fishing, intercoastal, and inland waterways.

We appreciate this opportunity to appear here today to give our views on three identical bills—H.R. 8298, H.R. 8376, and H.R. 8509—which seek to accomplish long-overdue amendment of the Interstate Commerce Act, as it relates to the inland boat industry. We are particularly grateful to the several members of the Interstate Commerce Committee who have joined us in cosponsoring the pending bills.

This legislation is a matter of deep concern to the workers we represent. Their jobs and their economic future are bound up in the economic future of this industry. If the inland boat industry prospers—as it has every right to prosper—then there will be jobs and a livelihood for our members. If this industry declines—as it is in danger of doing—then their jobs will be eliminated and their livelihood will be imperiled. So you can see the stake that they have in the outcome of these hearings and in the fate of this legislation.

With the subcommittee's indulgence, we would like to have Mr. Drozak take a few minutes of your time to tell you something about the inland waterways industry—to put it into some perspective, in terms of its role in our Nation's transportation system and its potential for serving the evergrowing transportation needs of this country. After Mr. Drozak has given you the background, Mr. Spencer will then discuss the substance of the bills before the subcommittee. Mr. Chairman, I would like to introduce Mr. Paul Drozak again.

Mr. FRIEDEL. Mr. Drozak.

STATEMENT OF PAUL DROZAK

Mr. DROZAK. Thank you, Mr. Chairman. The inland boat industry is the one section of the entire water-transportation industry that has been marked by growth in recent years. Barge lines account for 23 percent of all our water transportation. In a period in which our deep-sea, Great Lakes and intercoastal water commerce has been declining, inland barge traffic has shown an upward trend—up 50 percent over the last 10 years. In 1967, the value of this traffic was \$341 million.

There is another sharp distinction between the inland waterway industry and the rest of maritime. While the relative size of the fleets in all other segments of maritime has been declining, the number of barges and towboats has been increasing along the 25,000-mile network of our inland waterways system. In 1962, there were 4,253 towboats and tugs in operation in this country; by 1967, this number had increased to 4,395. As for nonself-propelled barges, there were 16,881 in operation in 1962, and by 1967 this number had increased to 18,611 or more.

This industry employs approximately 80,000 people afloat and another 80,000 in shoreside capacities. Its total investment in carrier equipment comes to over \$1.5 billion. So we are dealing here with an industry which, in the aggregate, is significant.

However, there is one point which we hope will be kept in mind. Despite its total size, this industry is comprised generally of small companies. No one knows exactly how many barge and towboat operators there are—not even the industry associations, themselves. The American Waterways Operators, Inc., estimate that there are some 1,700 such companies; and we would suggest that this figure is on the

conservative side. As an average, therefore, each company would have about 11 barges and/or two or three towboats or tugboats.

Because the average size of these companies is small, the growth of this industry has been peculiarly the result of technological advances; and in this area of technology, the greatest gains have been in the area of the horsepower of the tugs and towboats which move the strings of barges. Back 30 years ago, these vessels boasted about 300 horsepower; by 1962, this average had risen to 678 horsepower. Today, towboats of 3,000 horsepower and tugs of 1,200 horsepower are not uncommon; and the industry is studying the feasibility of towboats which could develop 10 to 12,000 horsepower.

Combined with this increase in power has been an increase in size of the barges, themselves. Where the average carrying capacity of a barge 20 years ago was some 930 tons, today the most common barge will carry 1,500 tons, and there are some capable of a 3,000-ton payload.

Together, the larger horsepower for the tugs and the larger carrying capacity for the barges has made possible a breakthrough in inland water technology undreamed of three decades ago. Today, a single tug or towboat can move an average of 40 barges at a clip, carrying 50,000 tons of cargo at a time. Let me make a few comparisons for you: That 50,000-ton payload is greater than that carried by many of the Nation's ocean-going freighters. It is the equivalent of the total cargo that it takes 2,000 trailer-trucks to move over our highways. It is equal to the carrying capacity of a dozen freight trains averaging 70 cars each.

In other words, the productivity increase on our inland waterways has been phenomenal. In 1947, our inland waterways traffic totaled 34.5 billion ton-miles. By 1967, this had increased to 173.3 billion ton-miles, a fivefold increase.

What is more, this increased productivity has been of prime benefit to shippers and consumers, because it has been translated into the lowest costs of any of our forms of domestic transportation. Taking everything into account, average rail costs are 15 mills per ton-mile; truck costs are 65 mills per ton-mile; but barge costs average only 3 mills per ton-mile. What is more, these barge costs are lower than they were 20 years ago; and in the face of today's steadily rising costs, this reduction in barge costs is not only significant, it is downright unusual.

Mr. Chairman, that gives us some idea of the contribution which our inland waterways are making to the economy and public interest. Thank you.

Mr. FRIEDEL. Mr. Spencer.

STATEMENT OF GORDON SPENCER

Mr. SPENCER. It is against this background, Mr. Chairman, that our union would like to present its views on the bills now being considered by the subcommittee. These bills deal with section 303(b) of the Interstate Commerce Act, passed by Congress in 1939, and which the Interstate Commerce Commission is only now proposing to be put into effect. On two occasions, the ICC has delayed implementing this section of the act to permit Congress to consider the problems that would result from its enforcement; and as things stand now, section

303(b) is due to become effective on June 30 of this year, unless the act is rewritten.

Section 303(b) presently exempts bulk commodities from certain types of regulation, including the filing of rates (and their approval by the Commission) and the acquisition of certificates of convenience for routes traveled.

This exemption of bulk commodities is allowed provided that not more than three different bulk commodities are carried in one vessel. This exemption is almost worthless to the inland boat operator, however, because the law defines a string of barges as a single "vessel," even if there are 40 different barges in the one tow. In other words, if a fourth bulk cargo is added to a tow, even if it is only a single barge out of a flotilla of 40 barges, the exemption is lost.

Even if a tow carries the proper number of bulk products, the operator has to contend with further restrictions because of the way the law defines "bulk." Under the Interstate Commerce Act, bulk products are defined as those "which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count." Although this seems reasonable on its face, there is a "hooker" here, in the form of an additional phrase which reads "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939."

This is a "grandfather" clause which ties today's bulk cargoes to those of the pre-World War II era. Industry officials have repeatedly pointed out that many articles which were packaged in 1939 now move in bulk form; yet the ICC would, under the terms of section 303(b), be forcing the industry to go back to the "custom of the trade" 30 years ago.

There is still another disadvantage in the unrealistic language which considers an entire barge tow as one vessel, and this is in relation to the "mixing" of exempt (bulk) cargoes and nonexempt (nonbulk or packaged) cargoes. Under the interpretation of this language, if any nonbulk regulated cargoes are carried, the entire tow would then become subject to regulation. Cargo which would ordinarily be exempt would be lumped with that which is not exempt, regardless of the proportion between the two, and rates and tariffs would have to be published on the whole lot.

Unless this law is changed, barge operators are going to be forced to split tows according to the number or type of commodity carried, which means lower utilization of the tows and tugboats, which means increasing the rates to the shippers, and which ultimately means increasing the costs for the consumers.

The bills before this subcommittee would amend the 1939 act in two simple, but highly significant, ways:

(1) They would strike the parenthetical phrase relating bulk cargoes to 1939 conditions. This would serve to acknowledge the facts that exist today in terms of the way commodities are shipped. And it would mean an end to what ICC Vice Chairman Paul J. Tierney conceded has caused "much confusion and some litigation."

(2) They would eliminate the requirement which states that an entire tow is a single vessel. This would mean that an unlimited number of bulk cargoes could be moved in a single tow, as long as no more

than three were carried on any particular barge. And it would allow exempt and nonexempt cargoes to be "mixed" in the same tow with the regulation extending only to the nonexempt part of the tow and not to the exempt cargo.

If these amendments are enacted, the inland waterways transportation industry will be able to make full use of its advanced technology, to the benefit of shippers and consumers. In the process, this industry will be able to continue its significant contribution to the movement of goods in this country, where the demand for transportation continues to outstrip our national capability to provide high-quality, low-cost facilities.

We therefore urge this subcommittee to report out the proposed amendments, so that the inland waterway industry can get on with its job of carrying cargo, without the threat of strangulation.

Mr. FRIEDEL. Any questions, Mr. Adams?

Mr. ADAMS. First I would like to welcome Captain Adlum from our area, and I am pleased you were able to wait over and spend the day with us today.

Gentlemen, it is also nice to see all of you here for this hearing this morning.

I want to pursue with you just a moment your facts on page 3 which indicate that you have an industry that is operating and, I agree, should be technologically expanded on the waterways.

Do you have—and I asked the others, as you know, that have come in here—a survey; do you have factual information that you could give this committee as to where we could go with some type of point-to-point relaxation of regulations where there is competition so that we wouldn't have either the old-fashioned bulk-commodity definition, neither would we have the present "mixing" rule. But we would allow the competition to exist and in the other areas maintain regulation over the railroads and other modes where they have a different situation?

Your statement here, for example, 50,000-ton payload is equivalent of 2,000 trailer-trucks and dozen freight trains of 70 cars each, indicates to me that the key factor is that this industry has a place and should be expanded for the low rates it can give to shippers. Can you supply us with that?

Mr. SHEPARD. Yes, sir; we have been doing research on this. I will ask our research people to provide this committee with all of the information we have concerning this.

Mr. ADAMS. We would appreciate it; in other words, where your operations are conducted, give us some kind of statement on the competitive pattern so we can follow what the chairman mentioned. We want to know what areas we can carve out exemptions and free up this industry so that it is not bound by the old-time rules.

Mr. SHEPARD. We will provide this committee with the benefit of what we have done in our research of the inland waterways. In fact, we have it; it is quite extensive.

Mr. ADAMS. Right; if you have a summarization for us, as, for example, "This waterway, these points, we have this kind of operation," we would appreciate that.

Mr. SHEPARD. Fine, sir; we will present the committee with the research we have done in that field.

(The information requested was not available to the committee at the time of printing.)

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. I have only one question. I don't intend to be putting you on the spot, but I am going to ask you directly: Do you gentlemen know of any labor organization who is opposed to this legislation?

Mr. SHEPARD. No, sir. We don't know of any labor organization who is opposed to it. I would have to think that if they were opposed to it, they would have been here to try to get their position in front of you. There are several other organizations involved who have contracts with companies doing business in this field, but I have not detected any of them here, and neither have I—well, I have made no inquiry, by the way.

Mr. KUYKENDALL. I didn't expect you would run a survey. Thank you, Mr. Chairman.

Mr. SHEPARD. I want to thank you gentlemen very much for permitting us to present our views to you. Thank you.

Mr. FRIEDEL. Our next witness is Clinton H. Vescelius of the Olin-Mathison Corp.

STATEMENT OF CLINTON H. VESCELIUS, MANUFACTURING CHEMISTS ASSOCIATION

Mr. VESCELIUS. My name is C. H. Vescelius. I am appearing on behalf of the Manufacturing Chemists Association (MCA) in support of the proposed legislation H.R. 8298, H.R. 8376, and H.R. 8509. MCA is a nonprofit trade association of 180 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.

MCA members have some 1,400 plants in the United States, with representation in almost every State. Many of these plants are located on navigable waterways and make use of the inland waterway system for inbound shipment of raw materials to be used in manufacturing processes and for distribution of manufactured products to warehouse points as well as directly to customers.

Chemical producers locate many of their plants along rivers because of the low cost and high efficiency of water transportation. Along the Mississippi River, between Baton Rouge and New Orleans, 44 such plants represent \$2 billion new investment in facilities and property over the past 10 years. Access by waterway to domestic and world markets for raw materials and products was a determining factor in the choice of those plant locations.

The purpose of H.R. 8298, H.R. 8376, and H.R. 8509 is to make lawful the practice of mixing unregulated bulk and regulated nonbulk commodities in a single tow on inland waterways, a practice now unlawful as a result of a U.S. Supreme Court decision, but which has been a practice for more than 27 years.

Water carriers benefit from the greater efficiency and profitability of the mixed tow, and shippers, including chemical shippers, benefit

from reduced unit transportation costs. The alternatives, which include private carriage, are most costly. An historical comparison shows the chemical industry's extensive use of waterways as well as the large increase in use over a recent 10-year period. While a precise comparison is not available because of a change in reporting categories, a review of statistics published by the Corps of Engineers, Department of the Army, indicates that the tonnage of chemicals and related products transported by domestic barge increased threefold in the period 1957 to 1966, the last year for which statistics are available.

MCA believes that the opportunity for mixed tows contributed substantially to the healthy growth of barge transport and urges continuance. To end it would, we believe, serve no constructive purpose; rather, it would impede the ability of water carriers to provide efficient transportation.

In conclusion, we believe the public interest will be well served, without concomitant disadvantages, by the sound economy of the mixed-towing practice as demonstrated by water carriers in adoption of this practice. The pending bills will simply permit barge operators to continue doing what has been a well-established and highly satisfactory common practice. This will allow the maximum utilization of powerful towboats that have been developed over the past 15 years, contributing to stability of rates, to the benefit of the shipper and the consumer. Efficient, low-cost transportation is a vital factor in preserving price levels which will contribute to the anti-inflation effort.

We support the pending bills and strongly recommend favorable action on them by the subcommittee, in the belief that this legislation will contribute to appropriate and useful national transportation policy as well as benefit the public as a whole.

Mr. FRIEDEL. Any questions?

Mr. ADAMS. Mr. Chairman. Are the rates, Mr. Vescelius, in the nonregulated area on a point-to-point basis that your people pay, fairly stable at the present time, or do you have great variation and you feel that maybe somebody is getting a better deal than you?

Mr. VESCELIUS. They are very stable.

Mr. ADAMS. In other words, when you get into this nonregulated contractual negotiation, you find that there is a fairly stable charge made by all of these various companies to all of your various affiliates, is that right?

Mr. VESCELIUS. That is correct.

Mr. ADAMS. Is there any kind of a formal or informal publishing system or is it just that each of your traffic managers knows about what it ought to cost?

Mr. VESCELIUS. I think the latter part of your statement is the way it works in actual practice.

Mr. ADAMS. What percentage of products do you ship by barge and so on as compared to rail on a point-to-point basis? You mentioned specifically here, I believe, the area of Baton Rouge to New Orleans, where you have your plants. Where do you ship and what is the percentage?

Mr. VESCELIUS. I am speaking for the manufacturing chemists; that is, the entire chemical industry—I cannot speak for them on your question but I would safely assume, I think, that their percentage relationship would be similar to my own company's; and speaking for my

own company, our water transportation probably does not exceed 15 percent of our total transportation. The balance would be made up of railroad and truck.

Most of these large chemical complexes you see down at the lower Mississippi, for example, have tremendous rail shipments coming out. The materials that go into these chemical plants, by and large, are the raw materials; the finished products go out in tank cars and boxcars and hopper cars.

Mr. KUYKENDALL. Let us get something straight. Are you talking about 15-percent ton-miles or revenue?

Mr. VESCELIUS. The dollar spent.

Mr. KUYKENDALL. The ton-miles are specifically mentioned.

Mr. VESCELIUS. Yes; I would say so, yes.

Mr. KUYKENDALL. Thank you.

Mr. ADAMS. Our underlying problem as you heard us discuss before—and I want your viewpoint as a shipper of chemicals who is dealing extensively with both—is: We need an opinion whether or not, as a shipping man or a man that is involved in this, whether you really compete head to head and point to point rail line versus bargeline. Or is it, as I suspect, that you use barges entirely for one kind of operation and almost never even discuss certain shipments with regard to the rails, because the price is so much less and there is no time factor. And yet where you are shipping your finished products and so on, you use almost no water transportation because you have a tighter time schedule or you are going to points that are not served. Would you describe that operation?

Mr. VESCELIUS. Yes, sir. I believe that this matter of choice as to how we move these products is largely a matter of cost. It is as simple as that. The cost of barging or on the waterways is considerably lower than anything the railroads can come up with, and that is the reason we have these tremendous volumes by water of raw materials. They can move farther for less money and we can reach out farther and get our raw materials that way, you see.

Mr. ADAMS. Still, when we are talking about these nonregulated bulk commodities in the chemical industry, the manufacturing chemists that you represent, really, there is not a rail barge competition on that type of bulk commodity, is there?

Mr. VESCELIUS. In some cases there is, and we explore these cases constantly. Now, it comes down, as I say, to a matter of cost and what rates that the railroads can come up with to become competitive with, let us say, an existing waterway or planned waterway movement.

What we find, of course, is that they simply cannot meet the costs, and their rates can't come down or they get themselves down below out-of-pocket costs. They are given an opportunity to quote on many of these requirements to come in; a new move, for example, you would explore the possibility of rail and get into all of the ramifications of that.

What you find is, the materials that are going by water are going by water simply because the comparison had been made at some point along the line and water was the low-cost method. The rails were given the opportunity and could not meet it.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you very much.

Our next witness will be Mr. Jens C. Jensen, general traffic manager of the Great Western Sugar Co., Denver, Colo.

You may proceed as you wish.

**STATEMENT OF JENS C. JENSEN, GENERAL TRAFFIC MANAGER,
THE GREAT WESTERN SUGAR CO.**

Mr. JENSEN. I appreciate the opportunity to appear here and I would like to read my statement if I may.

Mr. FRIEDEL. All right, proceed as you wish, Mr. Jensen.

Mr. JENSEN. Thank you, sir.

My name is J. C. Jensen. I am general traffic manager of the Great Western Sugar Co. with headquarters in Denver, Colo. This statement is submitted in opposition to H.R. 8298, H.R. 8376, and H.R. 8509, on behalf of sugar beet growers in 17 States and 10 beet sugar companies, representing nearly 90 percent of the total United States beet sugar production.

The organizations on whose behalf I appear include the following:

SUGARBEET GROWER ASSOCIATIONS

Name, Headquarters, Principal Officers and States represented

National Sugarbeet Growers Federation, Greeley, Colo.; William Beck, President; Richard W. Blake, Executive Vice President; Colorado, Idaho, Kansas, Montana, Nebraska, Oregon, Utah, Washington and Wyoming.
Red River Valley Sugarbeet Growers Association, Inc., Fargo, N. Dak., Arnet O. Weinlaeder, President; and Aldrich C. Bloomquist, Executive Vice President; Minnesota, North Dakota.
California Beet Growers Association, Stockton, California; Owen S. Rice, President; and Malcolm Young, Executive Manager; California.
Texas-New Mexico Sugar Beet Growers Association, Inc., Hereford, Tex.; Jay Boston, President; and, James Witherspoon, Executive Secretary; New Mexico, Texas.
Farmers and Manufacturers Beet Sugar Association, Saginaw, Michigan; Carl H. Yackle, President; and Loren S. Armbruster, Executive Vice President-Growers; Michigan, Ohio.
The Amalgamated Sugar Co., Ogden, Utah; Idaho, Oregon, Utah.
American Crystal Sugar Co., Denver, Colo.; California, Colorado, Iowa, Minnesota, North Dakota.
Buckeye Sugars, Inc., Ottawa, Ohio; Ohio.
The Great Western Sugar Co., Denver, Colo.; Colorado, Kansas, Montana, Nebraska, Wyoming.
Holly Sugar Corp., Colorado Springs, Colo.; California, Colorado, Montana, Texas, Wyoming.
Michigan Sugar Co., Saginaw, Mich.; Michigan.
Monitor Sugar Co., Bay City, Mich.; Michigan.
Northern Ohio Sugar Co., Denver, Colo.; Ohio.
Union Sugar Division, Consolidated, Foods Corp., San Francisco, Calif.; California.
Utah-Idaho Sugar Co., Salt Lake City, Utah; Idaho, Utah, Washington.

These bills directly affect the welfare of the thousands of persons in 17 states involved in the growing of sugar beets and the production of beet sugar.

The 17 states, listed alphabetically for convenience, are:

California	Minnesota	Oregon
Colorado	Montana	Texas
Idaho	Nebraska	Utah
Iowa	New Mexico	Washington
Kansas	North Dakota	Wyoming
Michigan	Ohio	

Now, at this point, Mr. Chairman, if I may depart from my statement in view of any fear yesterday that perhaps I might not have gotten up to testify, I did add some statements at the back of the statement on pages 5 and 6 and I think it would be appropriate to read those at this time.

Many of the organizations for whom I speak are members of the National Industrial Traffic League. I would like the record clearly to show that the testimony submitted by Mr. William G. Stockton in behalf of the National Industrial Traffic League is not to apply for account of any of the organizations for whom I speak.

After having heard the testimony submitted in support of the proposed bills it is obvious that it is all directed to the maintenance of a status quo situation with the idea that no deregulation is involved. The fact is that deregulation of bulk movements via barge lines, will become exempt from regulation by passage of these bills. Sugar, in bulk via all modes of transportation is today subject to full regulation under the Interstate Commerce Act and I respectfully urge that the proposed bills not be used as a device to grant exemptions from regulation that do not now exist.

During questioning of Mr. Breithaupt, May 21, 1969, there was some indication that deregulation of the railroads and perhaps motor carriers on dry bulk commodities between points having access to barge service may be solution to the problem of competition between the different modes of transportation. This intermodal competition is an important aspect of the problems but I hope my testimony has made clear that another extremely important aspect is the effect on competition between users of transportation services.

A limited rail and perhaps motor carrier exemption such as suggested to Mr. Breithaupt would make our problem even more severe. Those of our competitors having access to unrelated barge service would than also have access to unregulated rail and truck service.

All things considered, I am persuaded that the position expressed by Congressman Dingell on the morning of May 21, 1969—that no further deregulation should be approved—is the preferable course.

Now, Mr. Chairman, if I may return to page 3 of my statement I would like to point out how this would affect us.

The bills propose to amend section 303 (b) of the Interstate Commerce Act so as to broaden exemptions from regulation now contained therein for the transportation of bulk commodities via water carriers.

Enactment of these bills will permit the movement of refined sugar, in bulk, by barge completely free of regulation and without the necessity of rate publication of any kind. All bulk sugar moving via railroads or for-hire motor vehicles is subject to strict Interstate Commerce Commission regulations and all rates must be published and posted on not less than 30 days' notice to the ICC and the general public.

These bills would actually create still greater discrimination than now exists, not only among the different modes of transportation but also between competing shippers serving common markets. This is in direct contravention of the purpose of the Interstate Commerce Act and the national transportation policy.

Let me illustrate. Some very important markets for bulk sugar, both beet and cane, are Chicago, St. Louis, Memphis, Cincinnati, and Cleveland. These points, and others along the river and canal system of the midcontinent, are directly served by bargelines which carry refined cane sugar from the cane refineries along the Gulf of Mexico at rates that are much lower than the rates the beet sugar industry must pay for shipment by rail to the same markets.

Let me emphasize: The Gulf cane refineries have access to barge shipment. The beet sugar producers, producing in the States I have enumerated, do not have access to barge shipment; they must ship by rail or truck, at higher cost.

The extent to which beet sugar shippers already must sell sugar under a severe rate handicap is illustrated by the following comparison of sugar rail rates from Colorado and Nebraska beet sugar processing plants to Chicago and St. Louis, with the sugar barge rates paid by the Gulf cane sugar refineries, on shipments from New Orleans to the same Chicago and St. Louis markets.

	Rail rates from Colorado-Nebraska		Barge rates from New Orleans	
	Rate per net ton	Minimum weight (net tons)	Rate per net ton	Minimum weight (net tons)
To:				
Chicago:				
Packaged sugar.....	\$14. 90	50	\$6. 75	600
Bulk sugar.....	12. 20	94	6. 20	1, 000
St. Louis:				
Packaged sugar.....	14. 90	50	5. 58	600
Bulk sugar.....	12. 20	94	18. 33	600
			5. 13	1, 000
			17. 88	1, 000

¹ Applies when placed in railroad cars, trucks, or warehouses at destination.

This is a typical example of the situation that exists for all the organizations for whom I speak. This discrimination, already severe, would be greatly increased if the proposed amendments are passed.

The proposed amendments will serve to reduce costs—rates—to shippers using the waterways. This alone will aggravate the present untenable competitive squeeze on beet sugar processors. In addition, however, if the proposed bills become law, foreign and domestic cane sugar refined in New Orleans and other southern gulf locations will move to market in bulk at whatever barge rates the cane refiners can negotiate on a moment's notice. The public and the ICC will have no knowledge of what these rates are. On the other hand, and in direct competition, the beet sugar producers are required to pay the published railroad or truckline freight rates which, of course, cannot be changed except by 30 days' notice to the public and the ICC. Obviously, such a situation is unfair and discriminatory.

It will be sincerely appreciated by the companies and beet growers for whom I speak, if the House Subcommittee on Transportation and Aeronautics will give serious consideration to the situation I have described. If the bills in question are to be reported out by this subcommittee, I respectfully urge that they be amended so as to provide that shipments of sugar, in bulk, by water carriers, will not be made exempt from regulation.

Mr. FRIEDEL. Am I to understand that cane sugar can be shipped in bulk and not beet sugar?

Mr. JENSEN. Via barge, that is correct, primarily because the beet sugar industry has no processing plants located near any waterway, that is, to the point that they can take advantage of it.

Mr. FRIEDEL. Mr. Adams, any questions?

Mr. ADAMS. Mr. Chairman, I am not sure the answer was correct. Sugar is under regulation at the present time?

Mr. JENSEN. Yes, sir. By either mode of transportation.

Mr. ADAMS. By any mode?

Mr. JENSEN. However, these bills if passed will deregulate sugar insofar as bulk movement on the waterways is concerned—

Mr. FRIEDEL. I thought your statement was that you were discriminated against, at the present time?

Mr. JENSEN. To the extent we have higher rates to a common destination than would have the cane refinery at New Orleans as I demonstrated on page 4.

Mr. ADAMS. That brings me to my question, which is that regulation or nonregulation of sugar moving by water is not going to help your situation one way or the other because you have a natural advantage of water movement as opposed to rail-truck movement, so whether we regulate it or deregulate it, we can't cure your basic problem of rates.

Mr. JENSEN. I agree. You cannot cure that basic problem. However, you do not need to further aggravate it by letting the cane refiners move sugar at rates of which we are not aware. We then do not know what price of sugar we would be competing with since we do not know what rates they must pay.

Mr. ADAMS. All right, I want to know why you assume that regulation would, in effect, change basically the rate that is paid for water transportation along the river, because it is my understanding that in the competitive situation that you have now, and this is what all regulation is supposed to do, is to establish a fair rate in terms of cost to the carrier. You have an established rate structure on the river now and regulation or nonregulation wouldn't change that.

They are below your price and can stay below your price on freight rates whether we do anything on the river.

Mr. JENSEN. I agree with that. However, on the other hand, for competitive purposes our companies cannot compete if they don't know what they are competing with. We do know that sugar is regulated and rates are published and we know what they are.

If sugar becomes deregulated, we will have no knowledge of what these rates are or what we are attempting to compete with.

Mr. FRIEDEL. Pardon me, do you contemplate the rates being lower than they are today?

Mr. JENSEN. I would not only expect them perhaps to be lower but in addition to that they can change on a moment's notice. If we found out, for example, under deregulation, that a cane refiner was barging sugar to Chicago at, well, let us say \$5 per ton, as an example, and we point it out to the railroads that serve our industry and convince them that they likewise ought to publish a rate of perhaps \$7 a ton which would permit us to compete and they go ahead and do it, they must do it on 30 days' notice.

In the meantime this cane refinery at New Orleans goes back to his bargelines and says: "I cannot compete with the published rate of the railroads of \$7; you will have to do it at \$2 or \$3," and we have no way of competing with that type of situation.

Mr. ADAMS. But this is a basic problem, that we regulate in those areas where there is an established monopoly situation by the granting of certificates of convenience and necessity where we have, in effect, kept somebody out and let somebody else in. And we do all that to protect the situation so rates won't be raised in one area and lowered where there is competition with the bargelines.

But I don't get your point that we are, or should be, regulating where the competitive forces actually exist and you can get lower prices by intermodal competition.

Mr. JENSEN. Mr. Adams, we are not asking for any more regulation than exists today. We are, however, asking that you not use this bill or whoever may be supporting it, as a device to promote deregulation.

I have sat here through 3 days of testimony and I have yet to hear any man on this stand testify that he favors deregulation right down the line.

Mr. KUYKENDALL. May I interject something there? That is the thrust of the railroads entire testimony, sir, is deregulation. They state openly that what they want, is deregulation.

Then I have misunderstood 3 days of solid testimony if I am wrong.

Mr. JENSEN. That is if the bargelines were granted the deregulation they are seeking. This is the only means the railroads would have of protecting themselves. I don't think they came out with a flat statement and said: Let us forget the Interstate Commerce Act and let us have deregulation.

I never heard anyone say that.

Mr. ADAMS. Suppose we required published rates for certain commodities but did allow the use of technology, in other words, mixing, or the use of mixed cargoes and also a redesigned bulk regulation system, which I think everybody agrees needs an overhaul. Would that meet your problem?

Mr. JENSEN. If I understand your question correctly, if there were no deregulation at all as a result of this bill, I obviously would have no further complaints to make on that basis.

Mr. ADAMS. In that case it would produce deregulation because they could ship sugar in bulk and mix it with other commodities but they would be required to publish their rates, would it meet your objection?

Mr. JENSEN. They would be required to publish their rates on the same basis, 30 days' notice, as all other modes of transportation and they would likewise be subject to suspension and review by the Interstate Commerce Commission to the same extent as other modes of transportation and you get into that area, you are right back in regulation again.

I don't think you can deregulate a little part of it here without bringing in the entire thing.

Mr. ADAMS. We can do a whole lot of different things with it. What I am trying to point out to you is that in the regulation area we are searching with people like yourself for the alternatives which would provide a spectrum of different types of regulations. You can put in a

rate regulatory system point to point on certain types of commodities and not go whole hog one way or the other.

I am trying to get down to, if there were ever to be published rates on your commodities and other commodities, allowing for mixing and a new definition of bulk commodities, would it meet your objection?

Mr. JENSEN. Under the new definition of bulk commodities if sugar would not then be an exempt commodity, that would meet our objection. However, as a traffic man and having been in this business for many years, I think the principle goes beyond that.

I think this idea of using technology or technological improvements and the building of bigger barges and all of this type of thing is not a proper premise on which to decide whether we should or should not have regulation.

Likewise, I do not believe the premise that 30 years ago sugar, for example was shipped in bags and today it is shipped in bulk and simply because of that change in shipment it should automatically deregulate shipments of sugar. If it were the case, that same deregulated shipment of sugar should be deregulated on the railroads and trucklines as the same principle follows.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Is sugar the only item that is involved that would actually have a change of regulation under this bill if passed?

Mr. JENSEN. Well, it would be both beet and cane.

Mr. KUYKENDALL. That is right, sugar itself, is that not the only item?

Mr. JENSEN. No, sir, it is not the only item. Unfortunately, I can only speak for sugar because I have not paid attention to other commodities, but I believe cement would be one. This is only my belief and I cannot answer because I have not gotten into it, but I am sure there would be many commodities involved that moved in packages and bags in 1939 that today move in bulk.

Mr. KUYKENDALL. Let me ask you: Why do you so obviously assume that in an industry where it costs five times as much per ton-mile to haul, to run a railroad as compared to a bargeline; five times, it costs 3 mills per ton-mile to run a bargeline and it costs 15 to run a railroad, why do you assume here that just as soon as this bill is passed, suddenly the bargelines are going to lower prices?

You are kind of impatient: you don't think they have much sense if they are willing to lose money that easily.

Mr. JENSEN. The question of the level of the rate perhaps is not so important to me as the question of knowing what the rate is, so that our industry can adjust themselves knowing what rate it is that we are competing with.

Mr. KUYKENDALL. I wish they were giving you the best rates they could now, so that they might pass it on to the consumer.

Mr. JENSEN. You talk about the bargelines?

Mr. KUYKENDALL. Anybody.

Mr. JENSEN. I would agree with that 100 percent.

Mr. KUYKENDALL. You say technology you don't think is a relevant basis of determining situations like this. I will tell you, when it gets down to the housewife's grocery cart, if technology makes the groceries cost less money, I am for it.

I would make it clear. I am primarily concerned about the housewife that buys the sack of groceries and pays for 5 pounds of sugar. Thank you.

Mr. JENSEN. I would agree with that, 100 percent, and would like to go a step farther, that today sugar on barges is regulated, they do publish their rates and we in the industry do use whatever rates they publish as a basis for getting the lowest rates we can from our inland points, and we would continue if we knew what rates they would publish in the event these bills were passed.

Mr. FRIEDEL. That is what Mr. Adams mentioned.

Mr. JENSEN. Yes.

Mr. FRIEDEL. Thank you very much.

Mr. E. Michael Cassady, Missouri Valley Association, was scheduled as our next witness, but he could not be here today. Without objection his statements will be made a part of the record at this point.

(There follows first the statement which Mr. Cassady would have presented orally and second his prepared statement:)

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

Mr. Chairman and members of the Subcommittee, my name is E. Michael Cassady. I am Executive Vice President of the Mississippi Valley Association which is the nation's largest water resource development organization.

I have a prepared statement which I would like to file for the record. I would also like to make some brief oral comments concerning my statement and also concerning some of the testimony which has been presented to the Subcommittee during the previous two days of hearings.

In the first two paragraphs on the second page of my statement I refer to a new technology in ocean-going equipment and, to my knowledge, this information has not been offered to the committee in other statements at the hearing. Because of its direct bearing to the legislation before this committee, I believe that it should be specifically pointed out to you.

The American Merchant Marine is, as you know, in a badly deteriorated condition. As American flag lines have suffered, so has the American shipbuilding industry and our balance of payments. The Maritime Subsidy Board recognized this problem when they granted subsidies to Lykes Bros. Steamship Co., Inc., Prudential Lines, Inc., and Pacific Far East Line, Inc., to build the new barge carrying ships. These new vessels, and their accompanying barges, are now under construction and will be in operation in a matter of months.

Mr. Watson mentioned here yesterday, the concern over rising labor costs and the cost factor is one of the chief advantages of this new ship-barge concept. A barge would be loaded at a point of origin somewhere on the inland waterways and would not be unloaded until it had reached its final destination overseas. At the least, this method would save a minimum of four handling operations, since it would not be necessary to unload the barge and reload the commodity aboard a ship at a Gulf Port nor would it be necessary to unload the ship at a foreign port and reload the commodity into another mode of transportation to its final destination. If storage of the commodity was involved anywhere along the way this would add an additional step or steps in the handling process. The savings in handling costs of this new concept are obvious and would provide American Flag lines with their first real advantage over foreign competition.

This new concept envisions the collection of barges from throughout the inland waterways systems at a seaport such as New Orleans for loading aboard the barge carrying ship. In the case of the LASH concept it is theoretically possible that each of the 73 barges which the ship can carry could be loaded with a different commodity. It is apparent that the legislation contained in HR-8509 and the other bills is necessary to prevent the destruction of this new concept before it has even gone into operation. It is obvious that the public interest in this matter goes far beyond any argument between the barge lines and the railroads.

The witness for the railroads yesterday made a point in his prepared statement and in his comments in answer to a question that barge lines had protested the proposed lowering of certain railroad rates. He inferred that there was something wrong in doing this but he conveniently ignored the fact that the railroads have consistently opposed every waterway improvement at virtually every level of consideration. Mr. Kuykendall's comment about the "ox being gored" was most appropriate because it would appear to be the railroad's position that they should protect their own ox but no other mode of transportation should have this same right.

This lack of consistency in the railroad's position is also apparent in the constant reference in their statement to the term "unlawful" in dealing with barge line operations. The railroads again conveniently failed to mention the fact that they have consistently refused to participate in joint rates and through routes with other modes and have taken every evasive step open to them to avoid complying with several specific decisions in this regard by the U.S. Supreme Court. What the railroads have done may not be exactly "unlawful" but it certainly is circumventing the intent of the courts.

One other point in our statement which should be mentioned is again with regard to the public interest. As I pointed out previously, the small shipper who ships only an occasional barge will be the one who suffers most if the pending legislation is not passed. Mr. Kuykendall made the observation yesterday that the barge lines' main advantage is in price rather than service. In view of these concepts, if the mixing of commodities within a tow becomes a problem because of a lack of action by this Subcommittee and the Congress, the small shipper who sends only an occasional barge, and who could have direct access to a foreign market for the first time, is the one who will suffer most. It seems apparent that the public interest would best be served by the passage of this legislation since the ultimate beneficiaries of this legislation will be the producers and consumers who are the general public.

Thank you very much for the opportunity to present this testimony.

* * *

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

My name is E. Michael Cassady. I am Executive Vice President of the Mississippi Valley Association and headquarter in Washington, D.C. I am here today in support of H.R. 8509 introduced by Mr. Boggs of Louisiana and related bills.

The Mississippi Valley Association is the Nation's largest water resource development organization. It is a voluntary regional association of commercial, industrial, agricultural and public bodies and, since 1919, it has fostered wiser and better use of the natural resources and productivity in the water-shed of the Mississippi River and its tributaries and contiguous waterways. Its membership now extends into 42 states and includes more than 200 local and regional organizations.

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 product or raw material 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 its 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 this legislation are plainly apparent and obviously necessary.

On October 4, 1967 when your subcommittee held hearings on measures identical to those being considered today, I appeared before you in support of them. In my testimony, I also pointed out the technological advances and greater efficiency within the towing industry. These advances and efficiencies have continued at an expanded rate with the design and construction of new and larger propulsion vessels and new and larger barges. I would like to update the reference I made earlier to the barge carrying ships which are soon to be in service. The first of the Lykes Brothers Steamship Company seabarge carriers is presently under construction at the Quincy, Massachusetts shipyard of the General Dynamics Corporation and it is anticipated that this service will be initiated in a little more than 12 months. In connection with the lighter aboard ship (L.A.S.H.) concept, the first such LASH vessel, the Acadia Forest, was recently launched and will initiate its service carrying 73 lighters on each voyage starting in October of this year.

A major advantage of the concept of the barge carrying ship is the ability to accumulate and distribute individual barges to and from the many interior ports on the Ohio, Illinois, Missouri and Arkansas Rivers and other tributaries of the Mississippi River. 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.

Policies of the Mississippi Valley Association are reviewed and adopted at an annual meeting each February attended by more than 2,000 delegates. The policy statement on Section 303(b) of the Interstate Commerce Act was developed by the Association's Traffic Advisory Committee, approved by its Resolutions Committee and then adopted by the membership as a whole. I might add that this policy statement was approved at all levels of consideration without a dissenting vote. It states:

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, and in the public interest should be considered on their independent merits and apart from any legislative changes in regulatory policy affecting any other mode of transportation.

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 this legislation and recommend its enactment at the earliest possible time.

TRAFFIC ADVISORY COMMITTEE

Co-Chairmen: A. C. Cocke, Maritime Consultant, 800 International Building, 611 Gravier Street, New Orleans, La. 70130 and Gerald Franzen, Chicago Assn. of Commerce and Industry, 30 West Monroe Street, Chicago, Illinois 60603.

Secretary: Robert L. Shortle.

V. J. Angell, The Valley Line Co., 411 North 7th Street, St. Louis, Missouri 63101.
Walter Baskerville, Upper Mississippi Towing Co., 7703 Normandale Road—Room 110, Minneapolis, Minnesota 55424.

- J. Clarke Berry, Canal Barge Co., Inc., 1200 Hibernia Bank Bldg., New Orleans, La. 70112.
- Donald Bidgood, Continental Grain Co., 5100 Oakland Avenue, St. Louis, Missouri 63110.
- George Blohm, Cities Service Tankers Corp., 60 Wall Street, New York, N.Y. 10005.
- Iver Brecht, Grain Processing Corp., 1600 Oregon Street, P.O. Box 341, Muscatine, Iowa 52761.
- Jesse Brent, Brent Towing Co., Inc., Drawer 8, Greenville, Miss. 38701.
- Cletus A. Broecker Ayrshire Collieries Corp., 105 South Meridian St., Big Four Building, Indianapolis, Indiana 46225.
- Richard J. Brown, Jr., Missouri Valley Steel, Inc., P.O. Box 89, Leavenworth, Kansas 66048.
- Braxton B. Carr, American Waterways Operators, Inc., 1250 Connecticut Ave., Suite 502, Washington, D.C. 20036.
- N. L. Caruthers, Chotin Transportation, Inc., 225 Baronne, Suite 2404, New Orleans, La. 70112.
- Arthur C. Collins, Jr., Sioux City & New Orleans Barge Lines, 7745 Carondelet, St. Louis, Missouri 63105.
- James Collins, International Salt Co., 228 North LaSalle—Room 1910, Chicago, Illinois 60601.
- James R. Cordoro, Rose Barge Lines, Inc., 222 South Central, St. Louis, Missouri 63105.
- E. J. Davis, Caterpillar Tractor Co., 100 N.E. Adams Street, Peoria, Illinois 61602.
- M. H. W. Dent, Shell Oil and Chemical Co., 1250 Avenue of the Americas, 12th Floor, New York, N.Y. 10020.
- W. J. Edmonds, Granite City Steel Co., Granite City, Illinois 62040.
- James B. Ellers, Pres., Ellers and Reaves, Inc., 3733 Lamar Avenue, Memphis, Tennessee 38118.
- Willard N. Finch, Memphis Freight Bureau, 701 McCall Building, Memphis, Tennessee 38103.
- E. Scott Finken, The Vendo Company, 7400 East 12th, Kansas City, Missouri 64126.
- Raymond L. Gibson, Board of Commissioners, Port of New Orleans, P.O. Box 60046, New Orleans, La. 70160.
- J. L. Gilbert, P.O. Box 981, Tampa Port Authority, Tampa, Florida 33601.
- W. Lowell Gordon, Lincoln Grain, Inc., P.O. Box 436, Atchison, Kansas 66002.
- Saul Greenstein, Inland Molasses Co., 1201 American Trust Bldg., Dubuque, Iowa 52001.
- T. M. Hogg, Greater Baton Rouge Port Commission, P.O. Box 380, Port Allen, La. 70767.
- William J. Hull, Water Resources Associated, 1660 L Street, N.W., Washington, D.C. 20036.
- M. E. Iten, Monsanto Company, 800 North Lindbergh Blvd., St. Louis, Missouri 63166.
- G. C. "Stoney" Jackson, Monsanto Company, Lion Oil Building, El Dorado, Arkansas 71730.
- E. Sam Jones, Peabody Coal Co., 301 North Memorial Drive, St. Louis, Missouri 63102.
- Gordon Jones, Alter Company, Box 3708, Davenport, Iowa 52808.
- C. Rodney LaMothe, Mid-West Terminal Warehouse Co., 5750 East Front Street, P.O. Box 11, Kansas City, Missouri 64141.
- J. P. Little, Oklahoma City Chamber of Commerce, Skirvin Tower-Park Ave. & Broadway, Oklahoma City, Okla. 73102.
- William McNeal, Oil Transport Co., Inc., P.O. Box 52708, New Orleans, La. 70150.
- J. O. Madgett, Mid-West Terminal Warehouse, 5750 East Front Street, P.O. Box 11, Kansas City, Missouri 64141.
- Colonel Wayne G. Mann, North American Car Corp., 77 South Wacker Drive, Chicago, Illinois 60606.
- Ben W. Martin, Bulk Terminals Co., 12200 South Stony Island Ave., Chicago, Illinois 60633.
- F. A. Mechling, A. L. Mechling Barge Line, Inc., 51 North Desplaines Street, Joliet, Illinois 60431.
- Raymond W. Meckfessel, Laclede Steel Company, Arcade Building—812 Olive Street, St. Louis, Missouri
- M. E. Midgley, Nilo Barge Line, Inc., 112 North Fourth Street, St. Louis, Missouri 63102.

Ross E. Mortimer, The Great Lakes Towing Co., 1800 Terminal Tower, Cleveland, Ohio 44113.
 William K. Nestor, Arrow Transportation Co., P.O. Drawer 520, Sheffield, Ala. 35660.
 Paul D. Pella, Marquette Cement Mfg. Co., 20 North Wacker Drive, Chicago, Illinois 60606.
 Leonard Peterson, Northern States Power Co., 15 South 5th Street, Minneapolis, Minnesota 55401.
 Frank Rankin, Gold Proof Elevator Co., P.O. Box 773, Louisville, Kentucky 40201.
 Winston Rashleigh, Consolidated Blenders, Inc., Box 689, Fremont, Nebraska 68025.
 T. E. Richards, John Deere Dubuque Works, Dubuque, Iowa 52001.
 Cliff F. Rickel, Armco Steel Corp., P.O. Box 1367, Houston, Texas 77001.
 Louis A. Schwartz, N. O. Traff & Transportation Bureau, 2926 International Trade Mart, New Orleans, La. 70130.
 Darrell H. Smith, Jr., International Salt Co., Clark Summit, Pennsylvania 18411.
 Robert Strange, Jr., Consolidation Coal Co., Inc., 2000 Koppers Bldg., Pittsburgh, Pennsylvania 15219.
 W. C. Theis, Simonds-Shields-Theis Grain Co., 401 Bd. of Trade Bldg.—4800 Main St., Kansas City, Missouri 64112.
 Donald Tidmore, Tulsa Chamber of Commerce, Tulsa, Oklahoma 74119.
 Fred Tinker, Big Soo Terminal, P.O. Box 209, Sioux City, Iowa 51102.
 A. H. Vail, A. L. Mechling Barge Line, 2700 South Robinson, Chicago, Illinois 60608.
 Rolland Wages, Northern Natural Gas Co., 2223 Dodge Street, Omaha, Nebraska 68102.
 James T. Wakley, Ohio River Sand and Gravel Co., P.O. Box 538, Parkersburg, West Virginia 26101.
 Hugo Waninger, Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, Missouri 63118.
 E. J. Weigel, Nebraska Consolidated Mills Co., 500 Kiewit Plaza, Omaha, Nebraska 68131.
 Rolfe E. Wisness, Board of Commissioners, Port of New Orleans, Railway Exchange Building, Suites D & E 21, St. Louis, Missouri 63101.
 David A. Wright, National Marine Service, Inc., 1750 Brentwood Boulevard, St. Louis, Missouri 63144.

Mr. FRIEDEL. Our next witnesses are Mr. James F. Pinkney, chief counsel for public affairs and Mr. Peter T. Beardsley, general counsel of the American Trucking Association.

STATEMENTS OF JAMES F. PINKNEY, CHIEF COUNSEL, PUBLIC AFFAIRS AND PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATION

Mr. PINKNEY. Thank you, Mr. Chairman.

Mr. FRIEDEL. We are glad to have you.

Mr. PINKNEY. I do not propose to read my entire statement, but I would like to have it reported completely.

Mr. FRIEDEL. That will certainly be done.

Mr. PINKNEY. My name is James F. Pinkney and I am chief counsel, public affairs of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. ATA is the national trade association of the motor carrier industry. It represents all types of motor carriers, and has affiliated associations in every State and the District of Columbia.

Our presentation will be in two parts.

Following me will be Mr. Peter T. Beardsley, our general counsel, who will present our feelings about the present competitive situation in the transportation industry and the proposal of the railroads that

rate controls on their bulk traffic be removed as an alternative to the passage of the legislation before the committee.

When this matter—the revision of section 303(b) of the Interstate Commerce Act—first came up on the Senate side 2 years ago (S. 1314) we did not appear, even though the firm and long-standing policy of the trucking industry is broadly in favor of the repeal or sharp restriction of the exemptions in the Interstate Commerce Act. We studied the proposal and found that its purpose was simply to overcome the adverse effect of a court decision without changing a long-standing practice of the barge operators—a practice which had not materially affected the trucking industry. But when hearings were held before this committee the railroads advanced the proposal, as they have now done again, that the problem could be solved by removing rate controls on all dry-bulk traffic, meaning over 65 percent of total rail traffic.

Wanting no part of such a far reaching and, in our judgment, dangerous rate deregulation proposal we testified in opposition to the railroad suggestions and we here again renew our total disagreement with it—on exactly the same grounds we stated last year.

In this statement I am simply restating our argument—and hope that this committee will not adopt the rail proposal as a solution to the problem of the mixing rule.

If this far-reaching rate deregulation proposal is adopted, it could do irreparable damage to motor carriers, and I use the word “irreparable” advisedly, and would have a long-range adverse effect upon the shippers, the ports, and places and regions of the United States, and on many particular descriptions of traffic. Bear in mind that we are here dealing with over 65 percent of all railroad tonnage and a very substantial percentage of regulated motor carrier traffic—all of which is presently regulated.

The Interstate Commerce Act has often been referred to as obsolete and archaic. It is neither. Down through the years it has been amended and changed scores of times. It has been carefully interrelated with our antitrust laws dealing with restraint of trade, mergers, and monopolies and predatory pricing, our securities laws, our agricultural policy, and so forth. At all times its heart has been the power given the Interstate Commerce Commission to insure just and reasonable rates. It is this power you are being asked to destroy with respect to over 65 percent of all railroad tonnage.

The basic reason for the Interstate Commerce Act in the very first place was to prevent unjust discrimination between persons, places, commodities and particular descriptions of traffic. The ICC cannot do this without the power to fix reasonable and just minimum and maximum rates. You may have been told that if you do what the railroads ask, the problem of discrimination could still be dealt with by the Commission. In our opinion, that simply is not so. The only effective weapon to control discrimination is the weapon of rate control. To correct discrimination someone must have the power to order carriers either to raise or to lower their rates. It is our opinion that:

Without the power the ICC could not have brought about the adjustment between freight rates in the North and in the South that was made in the so-called Southern Governor's case.

Without that power there would be no one to referee the very sensitive disputes between ports for inland traffic.

Without that power cutthroat rate warfare would again be the order of the day. Such rate warfare can only lead to a weakening of our common carrier service—which brings about poorer service, less safe operations, inefficiency, and the dissipation of revenues needed to advance the art of transportation. And in this competitive battle there will be many casualties among the smaller carriers of all modes. How many of the existing bargelines and specialized trucklines can stand up against a determined rate war waged by giants such as the new combines of railroads.

On this point let me say that someone has to pay the bill when a rate war takes place. Assuming that more than 65 percent of rail tonnage is thrown up for grabs, the other 35 percent will have to make up the loss. That means that the shippers of products which would continue subject to regulation will find their freight rates up if a common carrier system of transportation is to survive. The piecemeal regulation that would be left would also lend itself to secret practices by which shippers dealing in both regulated and unregulated traffic would be able to obtain advantages over their competitors dealing only in regulated freight.

Another factor that must be given careful consideration is that if better than 65 percent of the rails tonnage is freed from rate regulation, it seems to us that it will be impossible to prevent the balance of the rail traffic from following the same path. It is not possible to have an orderly transportation pattern if, so to speak, traffic regulations are in effect on 17th Street but not on 16th Street.

In our opinion, if such deregulation were to take place we would not only have chaos in our transportation system but also in our total economy. Application of antitrust type statutes might help the situation but in their application, requiring long periods of time, many casualties would occur long before any remedies could be obtained in the courts.

Now, Mr. Chairman, I will skip the next two and a half pages which deals with the history of rate regulation in this country and more or less makes the point the thing you have to concern yourself with is not monopoly among carriers but it is the problem of monopoly in industry generally which will be fostered by any lack of rate regulation in the Interstate Commerce Commission.

(The material Mr. Pinkney did not read from his prepared statement follows:)

It seems to me that this Committee should give careful study to the history of transportation regulation in this country. Let me briefly outline it. (And point out that my statement from here on follows my testimony before this Committee in September 1955 when a similar attempt was being made to do away with the Commission's rate power. The hearings which followed lasted over a period of several years and produced many thousands of pages of record.)

Cutthroat competition, not transportation monopoly, was the reason for the enactment in 1887 of the first act to regulate commerce.

In 1885, Mr. Charles Francis Adams, president of the Union Pacific Railroad, speaking on the subject of the effects of railroad competition, had this to say:

It may produce good in the end; but railroad competition, as necessarily practiced, causes for the time being the wildest discrimination and utmost individual hardship. That is, under its operation you will always find certain points when

there is a war of rates going on, which have enormous advantages conferred upon them, which advantages are not and cannot be extended to other points. The point, therefore, which is not influenced by the war of rates suffers terribly. Its business is destroyed. How the business community, under the full working of railroad competition, can carry on its affairs I cannot understand. I had not been able to understand how it could do it before I became president of a railroad and I do not understand it now. The businessman never knows what railroad rates are going to be at other places, or at different times. He cannot sit down and say, "I can count upon such a transportation rate for such a period of time, and make arrangements accordingly." He has to say, "I cannot tell today what the transportation rate is going to be tomorrow, either for me or for my competitor." This must be so just as long as uncontrolled competition exists. It cannot be avoided.

The next year a Senate committee reported on the situation and in its report of 1886, known as the Cullan report, stated:

The paramount evil chargeable against the operation of the transportation system of the United States, as now conducted, is unjust discrimination between persons, places, commodities, and particular descriptions of traffic. * * * The evidence is conclusive that personal favoritism between rival shippers first took place * * *. The indiscriminate and cutthroat competition of the carriers * * * offered a golden opportunity to those in search of secret and preferential rates.

Then, in April 1953, Commissioner Splawn of the Interstate Commerce Commission in an appearance before this committee said:

I wonder, Mr. Chairman, if the Interstate Commerce Act was passed to regulate the railroads as a monopoly? Back in 1887 when the railroads were cutting each other's throats, were they not competing for traffic inadequate to sustain the mileage that had been constructed; were not their promoters bringing into being new railroads; additional mileage, in competition with that which was already overcompetitive? Out of this overcompetition had there not come secret rebates; discrimination between persons; undue preference and prejudice as between territories and groups?

In 1931 in his book *The Federal Trust Policy*, John D. Clark, a professor of economics, concluded his chapter on the origin of railroad regulation as follows:

The Interstate Commerce Act was a wholly appropriate (although for a long time an ineffective) measure for the control of the competitive practices of industry and responded exactly to those unfair practices which were shown to exist in a dangerous degree. Up to the very time of its final enactment there were no other practices of such widespread character as to attract attention and of course railroad rebating was of importance to the public principally because its indirect result was a suppression of competition which might lead to price exploitation of the public by an industrial monopoly after all competitors had been driven from the field.

Note that the monopoly problem was industrial monopoly made possible by unregulated competition in transportation.

Between the first law enacted in 1887 and 1920, the Congress continuously re-examined its legislation to regulate commerce and made many changes. These changes were to strengthen the original concept of the act. In 1920 a major re-examination was made by Congress, and the Transportation Act of 1920 resulted.

Mr. PINKNEY. Before 1920 the act concerned itself with maximum rates, but in that year it was extended so that the Commission might prohibit rates which were unreasonably low, as well as those which were unreasonably high. Commissioner Aithison, speaking before the transportation officials of 11 European nations in Washington in March 1952, said of this development:

This was a distinct breakaway from the policy of freedom of competition, based on a realization that cutthroat competition in rates in the long run is a disservice to the public, and that to this public interest any private and selfish individual temporary gains must give way. Nevertheless, the minimum ratemaking power has been exercised but sparingly, and with much circumspection.

One of the salutary effects of giving the Commission minimum rate power in 1920 was to bring about the restoration of coastal and inter-coastal water carriage which had been the victim not only of World War I but of railroad selective rate-cutting practices. By selective rate-cutting practices I mean the practice of sharply reducing rates on selected competitive traffic for the purpose of driving out of business a competitor whose existence depends on the movement of the selected traffic.

Whereas in 1887 regulation was designed to prevent industrial monopoly made possible by the big shipper exploitation of competition between railroads, the act of 1920 was designed in this respect to protect a competing mode of transportation against unfair rate cutting by the railroads, and promote the solvency of the railroads themselves.

During the 1920's air and highway transportation appeared on the scene. By 1935 the highway transportation situation had become acute as truck rates were not regulated, and there was no control over the entry of persons into motor carriage. This unrestrained competition within the trucking industry was proving to be injurious not only to the public but to the carriers as well. Both the railroads and the motor carriers favored Federal regulation, and in 1935 the Motor Carrier Act was passed. This act brought the motor carriers under a very comprehensive system of regulation.

In 1940 similar action was taken to bring water carriers under Federal regulation, and at that time our present national transportation policy was adopted.

Let me now add one final thought about the present situation.

We in the trucking industry want no part of this so-called privilege, as the dry bulk exemption. Our people well remember the transportation jungle in which they operated prior to the enactment of the Motor Carrier Act of 1935.

They are painfully aware of the blight on the common carrier system caused by exemptions of all kinds. Each was designed to help some particular interest—such as agriculture—but nearly all of them have been used by other persons as a means of evading the law—and I used the word “evade” advisedly. Like the common carrier barge people and many railroads, we would welcome the repeal or, where repeal is not feasible, the sharp restriction of their present scope. That is the only safe course to provide equality.

Now, before presenting our general counsel who will supplement my statement I would like to offer for the record a statement of Mr. C. Austin Sutherland, managing director, National Tank Truck Carriers, Inc., which supports the position we take.

Mr. FRIEDEL. Without objection it will be inserted.

(Mr. Sutherland's prepared statement referred to follows:)

STATEMENT OF C. AUSTIN SUTHERLAND,
MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.

My name is C. Austin Sutherland. I am Managing Director of National Tank Truck Carriers, Inc., 1616 P Street, N.W., Washington, D.C., a Conference of the American Trucking Associations. I have held that position since the Association's founding in 1945.

Overall, I have been associated with the for-hire tank truck industry for over thirty years. During World War II, I was Assistant Director of the Tank Truck Division of the Office of Defense Transportation.

I am admitted to practice before the Interstate Commerce Commission and have appeared in many cases before the body, both as Counsel and as a witness.

National Tank Truck Carriers is a voluntary trade association, the members of which are engaged exclusively in the for-hire truck transportation of liquid and dry commodities in bulk. Our membership is composed of carriers in all of the 48 continental United States. We also have member carriers in several foreign countries, including Canada, Mexico, Australia, Great Britain, Switzerland and South Africa.

As an industry, for-hire tank truck carriers are responsible for the movement of approximately 33 percent of the tonnage hauled by all Class I and Class II motor common carriers. Additionally, of the total tonnage hauled by the motor common carriers of "General Freight" and the tank truck carriers—we account for 45 percent of that tonnage which consists of commodities in bulk.

Mr. Chairman, our position on H.R. 8298 and its companion bills is clear. While we have no objection to the water carriers solving the judicial problems caused by the so-called "mixing rule" by way of remedial legislation; we must object, most stringently, to any legislative action which would extend to the railroads or to the trucking industry any form of deregulation of bulk commodities.

Should these bills be used as a vehicle for deregulation we would oppose them with all the power at our command.

The for-hire tank truck industry is not in competition with the water carriers. We are, however, in constant and vigorous competition with the railroads (and, of course private carriage).

In preparing my testimony for this Committee session, I have reviewed the transcripts of prior hearings on these proposals.

Competition in transportation—particularly in bulk commodity transportation—is a reality today.

Competitive factors in our business are cost and service. All transportation modes use these factors to gain a competitive edge. The tank truck industry has some cost and service advantages over the railroads; and, conversely, so do the railroads have some advantages over us.

The barrier between use and misuse of these cost and service factors is regulation. It is, in short, the "referee" in an intensely competitive battle. The Congress recognized this situation when they included the phrase "inherent advantage" in the national transportation policy.

Equality in transportation is not simply granting advantages to all modes. This would be self-defeating.

Equality in transportation is, rather, the proper regulation of all modes so that the advantages brought about by cost and service may benefit the shipping public.

Mr. Chairman, transportation legislation passed by the Congress has created a delicate balance between all modes based on solid competition. As I have attempted to point out, transportation regulation is the key to this balance.

The for-hire tank truck industry has made heavy capital investments on the premise that regulatory safeguards would never be removed.

The railroads, however, have long cried for the deregulation of bulk commodities. The reasons for this are simple. First of all, they realize that, after the chaotic rate war brought about by any deregulation, they alone would emerge the victors—bloodied—but victors just the same. Secondly, and in a more practical sense, the railroads really have nothing to lose.

The for-hire tank truck carrier, as I said, has invested millions in sophisticated vehicles, highly-specialized terminal facilities, cleaning racks, pumps, compressors, etc. By contrast, the railroads have a negligible investment in bulk handling equipment.

It may come as a surprise to many members of this Committee to learn that virtually every railroad tank car in the United States is, either, privately owned by shipper or leased to the shippers by tank car manufacturers.

Indeed, in a report in ICC Investigation and Suspension Docket No. 8135¹ an Examiner noted that as of 1965 the total privately-owned tank car fleet numbered about 175,000 cars. He also pointed out that the railroads owned only about 6,000 tank cars which are employed mainly in the transportation of liquid commodities needed in the performance of their own operations as carriers.

¹ ICC, I & S Docket No. 8135—Served 23 Dec. 65.

The shipper loads his own tank car and the consignee unloads it. It is as simple as that. All the railroads supply is a power source and a set of rails.

The railroads would have much to gain, however, by deregulation. After a debilitating rate war, the railroads would have no competition for this bulk business, and, as we saw in the early 1900's bulk commodities would be moved at whatever rate the railroads so choose.

Gentlemen, this is not the first time that I have opposed a deregulation measure before Congress. In May, 1963, I testified before this Committee in opposition to that portion of H.R. 4700 which would have deprived the Interstate Commerce of the right to establish minimum rates on Commodities transported in bulk. I also opposed the exemption of rail-transported bulk commodities before this same subcommittee in 1967 during hearings held on H.R. 7610.

In the first appearance referred to, I felt it necessary to include in the record numerous cases which demonstrated attempts by the railroads to erase tank truck competition in several selected geographic areas by the simple tactic of cutting their rates below their own full cost. A tactic, which, by the way, has been repudiated by the Interstate Commerce Commission time and time again. I do not feel that it is necessary to recount those cases here.

In the ten years prior to that testimony, National Tank Truck Carriers had been involved, as a party of record, in many of these cases. It has cost our industry thousands of dollars but it appears as if the money was well spent.

Suffice to say, the Congress did not choose to deregulate bulk commodities, and the ICC has decided these cases in favor of the low-cost carrier and the traffic was so moved since then—service considered.

Since that time, we have not been involved in one major incident of rate litigation with the railroads. As a matter of fact, the past four years have seen the beginning of an unprecedented era of intermodal cooperation—between the motor carrier and the railroads—in the transportation of regulated bulk commodities.

Many of our carriers have entered into formal agreements with major railroads to provide a through-service for various types of commodities. The railroads and the motor carriers have shared the cost of building specialized terminal and siding facilities that utilize the advantages of each mode. Admittedly, this type of cooperation is now at a small scale, however, it is ample proof that the proper regulatory climate can benefit the public.

It is because—not in spite of—these advances that the tank truck industry will always be ready to fight to the death against any form of deregulation of railroad transportation of commodities in bulk.

It is also important to note that our industry would not willingly accept mere application of various antitrust statutes in lieu of bulk commodity regulation. Such a switch would set mode against mode; and, in the tank truck industry, carrier against carrier. By the time the courts had concluded due process there would be no for-hire tank truck industry fit for survival.

Regulation has fostered keen competition in transportation. This competition is the essence of any healthy free enterprise system. Right, there, I would like to quote from a distinguished member of the Interstate Commerce Commission, the Honorable John W. Bush. He made these remarks in April, 1967:

"Competition has been an important factor in the development of our transportation system. Nevertheless, transportation history teaches us that while competitive forces generally are effective in reducing prices and improving standards of service, these very same competitive forces, if totally unchecked would result in eliminating competition and in disrupting reasonable and fair rate regulations between competing shippers, geographical areas, and territories. Unregulated or inadequately regulated competition can be much an evil as unregulated monopoly."

In summary, Mr. Chairman, I have spent most of my entire adult life watching the for-hire industry grow and prosper. This has been made possible by fair and effective regulation.

I feel certain that this Committee shares our enthusiasm for success and wants to see it continue.

I realize that the legislation now before you contains no specific proposal regarding modes other than the water carrier. We have no objection to the present language. However, I do want to assure the Committee that extension of the proposed exemption to modes other than the water carriers would achieve not equality but chaos.

Mr. PINKNEY. Now, Mr. Beardsley.

STATEMENT OF PETER T. BEARDSLEY

Mr. BEARDSLEY. Mr. Chairman, and members of the subcommittee, my name is Peter T. Beardsley and I am general counsel of American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C.

We appreciate the opportunity to present our views with respect to H.R. 8298, 8376, and 8509. These bills are identical to H.R. 7610, which was considered by this subcommittee in the 90th Congress. They would amend the water-carrier bulk exemption contained in section 303(b) of the Interstate Commerce Act to allow the transportation in one tow of exempt and regulated commodities without losing the exemption for the bulk commodities. This would be accomplished by eliminating from the subsection the sentence which presently requires that all "vessels while navigated as a unit shall be considered to be a single vessel." The proposed legislation would also, for all practical purposes, remove the three-commodity bulk limitation. Finally, the bills would remove the requirement that the exemption applies only in the case of commodities in bulk which are transported "in accordance with the existing custom of the trade as of June 1, 1939."

Our position on these bills is the same today as it was with respect to H.R. 7610 in 1967.

We are reasonably sure the proposed broadening of the water carrier bulk exemption, standing alone, poses no real competitive threat to regulated motor carriers. But even so, the breadth of the proposal concerns us. The regulated motor carrier industry has always stood for repeal of existing exemptions in the law. We have, for example, time and again, sought rollback of the agricultural exemption contained in section 203(b) (6) of the Interstate Commerce Act, which is a prime source of much of the plainly illegal motor carriage being performed today. And we also recently supported, along with others, an amendment of section 203(b) (5) of the act which, hopefully, will eliminate some of the abuses resulting from that exemption.

We are very concerned, however, by the railroad proposal that this bulk exemption should be extended to them. Our department of research and transport economics, using freight commodity statistics published by the ICC, estimates that if this proposal were adopted upward of 65 percent of railroad traffic would be exempted from ICC regulation. An exemption of this proportion of rail traffic would threaten the very existence of regulated motor carriers of bulk traffic.

Federal regulation of railroads preceded enactment of the antitrust laws. Since regulation of competition in transportation has always been handled by the Interstate Commerce Commission, which was created for that purpose, Congress has excluded carriers so regulated from most of the provisions of the antitrust laws. A well-recognized separation of jurisdiction has resulted. In the business field generally, the antitrust laws are applied to assure fair pricing of goods and services in order to protect against unfair or destructive competition and monopolistic excesses which result from great concentrations of economic power in any area of the economy.

But the principles underlying the antitrust laws are equally important in the transportation industry, which touches almost every aspect of our national life. This is, indeed, the primary reason for the

existence of the Interstate Commerce Act and the agency which administers it, or at least its all-important economic provisions. The act and the agency serve the primary purpose of assuring that competition is conducted on a fair and sound basis, and that never again should a dominant agency of transport subject its competitors and the public to the abuses of monopoly and the discrimination, preference and prejudice inherent in unrestricted and uncontrolled competition among carriers.

It is now being seriously proposed that the bills before you should be amended to provide similar treatment for the railroads, which as I stated, in turn, would exempt greater than 65 percent of all rail traffic from regulation. The question of extension of the bulk commodity exemption was given serious consideration by the so-called Doyle group and was referred to in the Doyle report and that report concluded that there is already too much exemption from regulation.

It also concluded that regulation is required to insure adequate service to the great majority of shippers. In discussing the railroad efforts to deregulate bulk and agriculture commodities moving by rail, the Doyle report concluded that to deregulate approximately 70 percent of the railroad tonnage would make regulation of transportation so generally ineffective that it would be, of necessity, abandoned.

The Doyle report (p. 533) summed up its position in the following words:

Equality of treatment of the several modes is a sound objective of our national transportation policy to which this entire study has been dedicated. We have, however, also established the position that the national interest must take precedence over any other, more limited interest. If regulation is rendered ineffective by large-scale exemption therefrom, and if regulation is essential, then any extension of exemption, even in the interests of equity, is contrary to the public interest.

RAIL MERGER MOVEMENT

We have reached today, for all practical purposes, a monopoly position in rail transportation. With the rail merger movement at full throttle, the monopoly power in rail transport becomes more intensified as it settles into the hands of fewer and fewer rail executives. Although there are 74 class I railroads in the country, it would be a mistake to assume that there is any significant quantum of competition between railroads insofar as the general run of commodities is concerned. It should be noted that many of the class I railroads are wholly owned, or such a significant percentage of their stock is held by, other railroads that these 74 class I carriers break down into only 39 railroad "families." The largest rail merger ever authorized—Penn-Central—has recently been effected, and the so-called Northern Lines merger, one even larger in size than the Penn-Central, seems certain to be consummated within a few years. In addition, there are a dozen or so rail merger applications pending now before the ICC, and there seems to be no letup in the movement.

In order to show the tremendous economic power possessed by the major railroads and railroad systems, I am attaching appendix 1 a listing of the 10 largest railroads showing their net investment in railroad property and gross operating revenue, contrasted with sim-

ilar figures for the 10 largest class I line-haul motor carriers of general freight. The 10 largest railroads had in 1967 net investment of \$12.75 billion, while their motor carrier counterparts had net investment of \$249 million, or about 2 percent of the rail figure. As you can see from these figures the motor carriers are virtual pygmies compared to the railroads. This is particularly true of net investment—which represents economic power.

Also attached as appendix 2 is a showing of the contrast between the average capitalization and gross operating revenues of all class I line-haul railroads, on the one hand, and all class I intercity trucking companies, on the other. When the average class I motor carrier is compared to the average class I railroad the contrast is even more startling than the previous comparison. Whereas the 10 largest motor carriers had net investment of about 2 percent of that of the 10 largest railroads, the average motor carrier's net investment was less than one-half of 1 percent of that of the average railroad.

Insofar as general business is concerned, section 7 of the Clayton Act (15 U.S.C. 18) prohibits one corporation engaged in commerce from acquiring the stock of another such corporation "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." This provision specifically exempts transactions "duly consummated pursuant to authority given by the * * * Interstate Commerce Commission * * *." Literally hundreds of proposed business mergers have fallen by the wayside by virtue of this provision of the antitrust laws in industries ranging from banks to breweries, as a result of action by the Federal Trade Commission or the Department of Justice, or both. There can be little doubt that most, if not all, of the railroad mergers approved by the ICC over recent years would have failed to pass muster under this provision of the antitrust laws, had it applied to them.

In view of the tremendous and ever-growing concentration of economic power in the hands of an ever-declining number of railroads and rail systems, the time has come when Congress, in the event there is to be deregulation of the magnitude under discussion, should seriously consider taking positive steps to remove the umbrella of antitrust protection from rail merger activities.

RAILROAD RATEMAKING PHILOSOPHY

By and large, as already noted, there is little significant rate competition within the railroad industry. But when it comes to railroads as a class, in their competition without industry, their position is that they should have the widest managerial discretion to reduce their rates to a barebones minimum in order to divert our traffic. Their attitude was clearly revealed in the recent *Ingot Molds* case.¹ In that case, it was established that the water carrier rate (\$5.11 per gross ton) returned all but 8 cents of the fully distributed cost of performing the service involved, while the reduced rail rate of the same figure was significantly below \$2.48, the rail full cost. In view of these circumstances the

¹ *Ingot Molds, Pa., to Steelton, Ky.*, 326 I.C.C. 77 (1965).

Commission found that the barge service possessed the "inherent advantage" of lower cost, that the national transportation policy required it to "recognize and preserve" this inherent advantage, and that the rail rate "unlawfully impinged" upon the inherent cost advantage of the barge service. I should add that the barge service was supplemented by motor carriage for a very small portion, 31½ miles, of the through movement.

A district court in Kentucky set aside the ICC's order, and the matter was taken to the Supreme Court, which reversed the District Court and upheld the Commission's order. But the case serves to illustrate the point I wish to make, that if railroads were allowed to base rates on out-of-pocket cost as a matter of right, and their proposal here would allow them to even go beyond that level, they are in a position, whenever they choose, to divert any traffic they select from their water or motor carrier competitors. This is so because the railroads, by virtue of their capital structure, their method of operation, their great financial power, and their ability to transport every kind of traffic, could, by this type of ratemaking, deprive competing motor or water carriers of important segments of their traffic, and, ultimately, drive them into bankruptcy. If such a diversion were accomplished by virtue of inherent advantages possessed by the railroads, their competitors would have no just cause to complain. But, as in the *Ingot Molds* case, that is often not the situation.

If I could, I would like to digress here for just a moment from my prepared testimony. In his testimony yesterday the railroad witness discussed this *Ingot Molds* case to some extent and I am sure, well, he may have left the impression and, if he did, I am sure it was inadvertent, but may have left the impression when talking about water carriers protecting the railroad rate, that in this instance it was an exempt water carrier which had protested this rate.

If he did leave that impression I would like to correct the record. The water carrier here was a regulated water carrier and of course regulated water carriers have to publish their rates as do the railroads and the railroads have the same privilege of protesting regulated water carrier rates, and as do the water and motor carriers in the reverse direction.

I am informed by people who know this subject better than I that as a practical matter in the competitive area between the railroads and water carriers there is not a significant amount of protest, either on one part or the other.

Now, coming back to the prepared statement, I do not mean to suggest that the Commission has, or should have—as a matter of policy—rigidly limited carrier ratemaking discretion to a return based on full cost. As a matter of fact, in numerous cases, the Commission has allowed railroads to make rates which return little, if anything, more than their out-of-pocket costs. What I am trying to say is that acceptance of the railroad position would place the Commission in a

veritable straitjacket, without any power, regardless of the circumstances involved in a particular case, to hold a rail rate which returns at least out-of-pocket cost, to be unreasonably low. Of course if they got what they wanted here that out-of-pocket standard would not even be the law. I have been speaking only of the railroad position in intermodal competitive rate cases. Where in the rare instance the competition is between railroads, they sing quite a different tune. In the recent *Paper* case,² in which the B. & O. proposed lower rates to the ports it serves than the rates its rail competitors (for example, the New York Central) charged to the so-called northern tier ports, including New York, the rail protestants there took a significantly different position than they do in intermodal rate cases. There, they argued that it was not enough that the rates proposed by the B. & O. be compensatory, but, in addition, that they also "must not precipitate changes in the rate structure, or traffic, detrimental to the public interest. Essentially, it is urged that the rates * * * are unreasonable * * * because they constitute an unfair and destructive competitive practice, would be disruptive of the rate structure, and would needlessly dissipate carrier revenues." 329 ICC at 289. Of course, they want all of these requirements with respect to competition between themselves, they want to throw them out the window when competing with us and the water carriers.

Again, insofar as general business is concerned, our antitrust laws (for example, sec. 2 of the Clayton Act, 15 USC 13) prohibit discrimination in pricing where the effect "may be substantially to lessen competition or tend to create a monopoly in any line of commerce." This protection against predatory pricing, however, applies only with respect to commodities, and not to a service such as transportation. Certainly, any proposal to remove as much as 65 percent of rail tonnage from ICC regulation should be unthinkable. Even more unthinkable would be to remove ICC regulation without at least at the same time subjecting the railroads to application of the same antitrust provisions which apply to business generally.

To sum up this phase of my discussion, it is clear that the railroads seek to utilize every avenue, including that of cutthroat rate competition, to divert as much desirable traffic as they can from their motor and water competitors. We suggest that the last thing Congress should do—if it really wants to preserve a healthy transportation system in the public interest—would be to approve any proposal to tie the hands of the very agency that for almost a century it has entrusted with the delicate and complex task of regulation of transportation. But if, nevertheless, this extremely unsound approach is taken, then the railroads must be subjected to the same antitrust laws which prohibit predatory pricing of goods in commerce.

Thank you, gentlemen.

(App. 1 and app. 2 follow :)

² *Paper, Central Territory to North Atlantic Ports*, 329 I.C.C. 281.

APPENDIX 1—TOTAL OPERATING REVENUE AND NET INVESTMENT OF THE 10 LARGEST CLASS I LINE-HAUL RAILROADS AND THE 10 LARGEST CLASS I GENERAL FREIGHT MOTOR CARRIERS, 1967

[In thousands of dollars]

Name of company:	Net investment ¹	Gross operating revenue
Pennsylvania RR. Co.	1,392,697	873,825
Southern Pacific Co.	1,901,956	799,309
Atchison, Topeka & Santa Fe Ry. Co.	1,575,484	663,494
New York Central RR. Co.	1,267,033	636,006
Norfolk & Western Ry. Co.	1,570,627	594,178
Union Pacific RR. Co.	1,623,051	574,020
Seaboard Coast Line RR. Co.	974,571	417,396
Baltimore & Ohio RR. Co.	726,398	411,809
Chesapeake & Ohio RR. Co.	931,135	397,214
Missouri Pacific RR. Co.	789,017	318,329
Total 10 largest railroads	12,751,969	5,685,580
Consolidated Freightways Corp.	61,998	198,279
Roadway Express, Inc.	37,410	150,751
Pacific Intermountain Express Co.	21,284	108,749
Associated Transport, Inc.	36,588	105,219
McLean Trucking Co.	18,818	96,161
Transcon Lines	12,437	78,025
Spector Freight System, Inc.	2,750	75,860
Interstate Motor Freight System	16,321	66,275
Ryder Truck Lines, Inc.	18,852	57,206
D.C. International, Inc.	13,899	56,901
Total 10 largest intercity general freight motor carriers	249,357	993,426

¹ Carrier operating property less depreciation and amortization.

Sources: Transport Statistics in the United States 1967, Interstate Commerce Commission. Motor Carrier Annual Reports for 1967 on file at the Interstate Commerce Commission.

APPENDIX 2.—COMPARISON OF OPERATING REVENUES AND NET INVESTMENT, CLASS I LINE-HAUL RAILROADS AND CLASS I INTERCITY MOTOR CARRIERS, 1965¹

	Class I line-haul railroads	Class I intercity trucking companies
Number of companies	76	1,114
Net investment in operating property	\$23,296,786,000	\$1,490,385,000
Operating operating revenues	10,207,850,000	7,130,734,000
Average net investment per company	306,537,000	1,338,000
Average gross operating revenue	134,314,000	6,401,000

¹ 1965 figures are used since that is the last year for which comparable ICC rail and motor statistics are available.

Source: Transport Statistics in the United States—1965, Interstate Commerce Commission.

Mr. FRIEDEL. We thank you both for your very fine statements. I would like to ask this question of Mr. Pinkney or Mr. Beardsley.

It was suggested that the railroads have asked for the exemption or deregulation throughout the entire United States, if we exempt the water carriers. It was also suggested they should give thought just to being deregulated along the waterline routes, point to point where the routes are parallel. Do you have any suggestions on that?

Mr. PINKNEY. Mr. Chairman, I personally do not believe that would be possible. I think the best example of why it would not be was given by the preceding witness, Mr. Jensen, for the Great Western Sugar Co. There is more involved than just the competition between points A and B, both located, let us say, on the Mississippi River.

There is a problem of marketing, the marketing problem of the sugar people in the Denver, Colo., area who must rely on rail transpor-

tation. Therefore, the point-to-point deregulation between New Orleans and some point in the upper Mississippi Valley is one thing, but if you then permit unlimited rate warfare or rate reductions without publication of rates to occur there you immediately would dislocate business not on waterways.

I recall back in 1958 when we went over this same ground in considerable depth, the sugar people from Savanna came in and were concerned because of the problem of competition with the cane sugar from Louisiana coming up the river while they were having to move overland from Savanna to their markets, largely overland to the upper Mississippi Valley markets.

I think to permit it would be to dislocate the entire marketing picture in the United States. I personally can't come up with any possible solution along that line. I do not believe it would be a healthy thing to do.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. Mr. Chairman, thank you. I regret I was not here to hear the testimony of Mr. Pinkney, but I would like to ask Mr. Beardsley a question about your summary, where you said you do not think we ought to take any action that would tie the hands of the ICC.

What do you mean by that?

Mr. BEARDSLEY. In that connection, of course, Mr. Pickle, I was speaking of extending this exemption to the railroads. I mean, if you take 65 percent of rail tonnage and exempt it from the economic regulation of the ICC, you pretty well have tied their hands in trying to do their job to administer the law which you have entrusted them to administer.

Mr. PICKLE. Your main concern is this exemption, if extended, would not be extended to the railroads, but in either event, if it did, certainly it ought to be clear that no weakening of the antitrust provisions are made?

Mr. BEARDSLEY. Yes, in fact I am saying more. The present antitrust provisions were not really drawn with transportation in mind in most instances. You have the Clayton Act and other laws applying to business generally, but related to the sale of goods as distinguished from rendering of a service.

If you really want to get at it, you have to consider broadening some of the other laws if you are going to accompany exemption with real antitrust coverage.

Mr. PICKLE. What is the position of you gentlemen on the proposed amendment submitted by the ICC, the effect of which would require the publishing of rates?

Mr. BEARDSLEY. I don't understand that to be the ICC's position. If you are talking about their substitute amendment?

Mr. PICKLE. Yes.

Mr. BEARDSLEY. I didn't read that—well, I mean, what I understand that to be and, gosh, I must admit I will take their interpretation of their language over mine but, as I understand them, what they are saying is their proposal would retain the three bulk exemption.

You could still only have three bulk commodities in a tow, that is three bulk commodities not moving under published rates in a

tow. That is with respect to those commodities, but you could continue to mix the way they have been mixed in the past as I understand it.

I don't know if we have a real position on that, Mr. Pickle. I would suggest that we are kind of neutral in that area.

Mr. PICKLE. I would request that you submit to us your position of that particular amendment or your analysis because this is a proposal now of ICC and in their effort to restore what they call is the status quo and the question naturally comes up: "Should this go beyond what was their intent to correct the *Mississippi Valley* case or should it go toward what we, as a committee, directed them to do when we said 'give us your recommendation.'" I think your industry should give us your reaction to that proposal.

Mr. BEARDSLEY. I mentioned analysis. I tried to give that analysis now.

Mr. PICKLE. I mean whole recommendation. I realize it is a matter being advocated by the barge lines but all modes of transportation, that is rail and truck, certainly, are a part of this consideration.

Mr. PINKNEY. Mr. Pickle, may I ask a question? Is this exactly the same request you made of Mr. Breithaupt yesterday, that we try to put in legislative language a provision which would restore the status quo just prior to the court decision?

Mr. PICKLE. Yes.

Mr. BEARDSLEY. I hate to argue with my co-counsel but I understand you are asking for our reaction to the proposal of the Interstate Commerce Commission, not that we come up with still a third thing?

Mr. PICKLE. Yes, I am directly asking for your analysis and I hope recommendations on your analysis of the amendment as proposed by the ICC. I assume that will take into consideration you think it goes beyond the *Mississippi Valley* case or not. But I do think we ought to have before us that analysis.

Mr. BEARDSLEY. We will try to do that, Mr. Pickle.

Mr. PICKLE. And I would say to do it, or would request you do it, at your earliest convenience and our staff get in touch with you because time is of the essence.

In all fairness, the barge people are entitled to know what can be done or what relief this committee can recommend to the Congress.

That is all.

(The following letter was received for the record:)

AMERICAN TRUCKING ASSOCIATION, INC.,

Washington, D.C., May 26, 1969.

Re Hearings on H.R. 8298, 8376, and 8509 to amend the water carrier "mixing rule."

Hon. J. J. (JAKE) PICKLE,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN PICKLE: After the completion of my direct testimony at the captioned hearings, you asked for our analysis of, and position and recommendation on, the language the Interstate Commerce Commission recommended as a substitute for that contained in the bills under consideration. (Transcript, pp. 282-284)

Our analysis of the language submitted by ICC Chairman Brown, and appended to her direct testimony, is that it would directly overrule the decision of the District Court in the *Gulf Canal Lines* case, 258 F. Supp. 864 (1966), aff'd. *per*

curiam, 386 U.S. 348 (1967). That is, as indicated during our colloquy (Tr. 282), it would permit the mixing of tows containing regulated traffic with those moving under the bulk exemption, so long as the latter contained no more than three bulk commodities. It would not, however, go as far as the bills under consideration and remove the numerical limitation (three) on the number of bulk commodities which could be transported pursuant to the exemption.

Both Mr. Pinkney (Tr. 260) and I (Tr. 269) testified that the policy of the trucking industry has long favored repeal of the existing exemptions in the law. We also made clear that the basis for our completely different position respecting the bulk exemption as applied to water carriers and railroads, respectively, is that in the former case the exemption offers no real competitive threat to motor carriers, while in the latter case the situation is just the reverse.

The policy of the trucking industry regarding *all* exemptions in the law is as we stated it. Applying that policy to the proposals contained in the bills and the Commission's suggested substitute language, we favor the ICC proposal because its enactment would bring about a somewhat narrower exemption than enactment of the bills under consideration. We are frank to say that we are not sufficiently familiar with the day-to-day operations of the barge lines, whether regulated or not, to make a determination of whether the Commission's language, if adopted, would seriously hinder or impede them.

I trust this supplies the information you asked for. I am sending a copy of this letter to Chairman Friedel, with the request that it be included in the record of the hearings.

Sincerely yours,

PETER T. BEARDSLEY, *General Counsel*.

MR. FRIEDEL. I would like to say this: We have two more witnesses and would like to finish them this morning so be brief with our statements if we can.

MR. KUYKENDALL. One brief statement touched on by Mr. Beardsley, but I want to make this statement however. Just a few moments ago, a question came up and there was argument here, I think for the sake of the record—I can't believe that the two outstanding counsels of the whole industry would be here testifying against something if it didn't exist and that is the thrust for deregulation.

We all know it exists and we all know it is there and I am not blaming the railroad for wanting it but I think we better clarify the record, there is a thrust for deregulation whether that gentleman thinks so or not.

The question is, why do you think antitrust laws are not adequate to prevent predatory competition?

MR. PINKNEY. Because of the after-the-fact nature of antitrust relief.

MR. KUYKENDALL. Would you explain a little for the record, I know what you are thinking of, but what you mean by after-the-fact?

MR. PINKNEY. At the present time, the rate changes which would materially affect markets, ports, commodities, carriers, all shippers and so forth, can only take place after an opportunity to attack them and be heard before the Interstate Commerce Commission.

Under just the antitrust statutes the harm would be done, the act would take place and it might be months or even years before the courts could catch up to remedy the wrong that might have been done.

MR. KUYKENDALL. Thank you, Mr. Chairman.

MR. FRIEDEL. Mr. Adams?

MR. ADAMS. Yes, Mr. Beardsley, I appreciated your testimony and you parenthetically inserted something right after you discussed the *Ingot Molds* case and I want to be sure this was your testimony: That

you do not generally have railroad or water carriers appearing at the rate hearings for one another along the river. I want to say intermodal competition but I think the thrust of your statement is they do not really compete except in limited items. Is that what you said?

Mr. BEARDSLEY. No, sir, if I said that I did not mean to say it. I was speaking solely of the actions or activities of these competing modes of transport, railroads and regulated water carriers, not in competing but in protesting each others rates before the Commission.

Mr. ADAMS. That is what I was going to get at.

Mr. BEARDSLEY. I said my information, after discussing this with some people in the water carrier industry, and also at the ICC, was that by and large they weren't doing too much protesting of each others rates before the Commission, probably because, and again this is my interpretation, probably because they found in the past their protesting didn't get very far with the ICC suspension board, that the other fellows rates became effective anyhow and therefore I would assume their feeling was their protests at the ICC have not been successful in getting enough of these rates suspended, and one or the other, to justify very many such protests, that is all I meant by that.

Mr. ADAMS. Well, this goes to the point that I have been trying to pursue in these hearings and it is on page 7 of your statement here, that what ICC basically said in the *Ingot Molds* case was that, it is the National Transportation policy to recognize and preserve an inherent advantage.

We want to be able to use the technological advantages that may occur in the water industry or in any other industry. And if there is not truly an intermodal competition over a certain spectrum of this water carrier operation and I think we ought to free them up so they can go ahead.

I thought I got from your testimony and from your reference to the *Ingot Molds* case that in a great portion of these bulk commodities the reason they don't fight about one another's rates is they are not competitive. The figures you give here are that at \$5.11 per gross ton the water carrier rate was, in effect, profitable but it was \$2.48 under the railroad cost.

Mr. BEARDSLEY. Those are the figures from the case. Incidentally, we participated in that case, too. Of course I have to face the fact the railroads in their managerial discretion decided if they could get anything above out-of-pocket costs they were better off.

I might not agree with that philosophy and I would certainly hate to see it become the philosophy of the Interstate Commerce Commission or Congress, but I did not mean to say merely because I said that my investigation to the extent I made one disclosed there was relatively small amount of protests and attempts to get rates suspended regulated water carriers and rail carriers with respect to each others rates I did not mean to suggest there is not a lot of competition between them where the circumstances are such that competition is feasible.

Mr. ADAMS. You do not object, however, I gather from your testimony, to allowing a continuance of the barge operations, the carrying of bulk commodities and a redefinition of bulk commodities provided we don't exempt any more goods than presently are exempted?

Mr. BEARDSLEY. We have taken the position and we have to face the practicalities, namely that the water carriers transport goods in such quantities that even if they were regulated, even if they were required to publish these rates so far as their motor carriers "competitors," and I use that word in quotes, is concerned, we probably couldn't compete with them anyhow.

I don't mean to suggest that is the situation with the railroads. That is the reason we, as a practical matter, aren't spilling our blood, so to speak, to object to this exemption in the area that we are talking about.

If it affected us, of course we would feel differently about it, in all candor.

Mr. ADAMS. But that is, and I will stop here, Mr. Chairman, the thing I sense in this whole proceeding. There is a whole area of water carrier operation that the other modes really are not competitive with. And that in that whole area we should free up the technological advantages that they have and not require them to break 39 down into 13 or use any artificial basis. I am trying to get from each witness and if you want to send it, I don't see how you people are involved, but if you want to send in an analysis to the committee which gives us this breakdown as to where we might slice it, we would be happy to have your views on it.

I think there are a substantial number of commodities moving in a substantial area of this country that we could allow to be carried in any number of vessels and in any kind of mixing operation and we would like to know where they could go and what commodities they are.

If you have comments to make we will be happy to have them.

Mr. BEARDSLEY. Only that you are undertaking a herculean task when you try to do that.

Mr. ADAMS. At some point we know we are either going to have to do it or take the technological advantages and continue to put a series of artificial restraints on them which is the same type of task, the only advantage is you spread it over the fourth dimension, which is "time."

Mr. BEARDSLEY. All I am suggesting is the picture you get today, you could take all of the points between which water carrier and railroad competitors; for example, which a water carrier hauls, such as was involved in the *Ingot Molds* case, combined with admittedly a small motor carrier hauler which competes with the railroad movement and then look around 10 years from now you might find you put yourself in another straightjacket.

Mr. ADAMS. I know we are going to have to continue to do this. But you might say we could haul these commodities on a mixed basis. But I can see parties becoming frozen into certain positions at this point and if they stay in those positions, nothing is going to happen. So we are trying to see if there is a position that we can find where we can recognize the technological advantages without fouling up the complete intermodal competition system.

That is all.

(The information requested was not available to the committee at the time of printing.)

Mr. FRIEDEL. Thank you very much gentlemen.

We have one more witness, Dr. W. H. Joubert, general traffic manager, Bowaters United States Corp., Calhoun, Tenn.

You may proceed.

**STATEMENT OF DR. W. H. JOUBERT, GENERAL TRAFFIC MANAGER,
BOWATERS UNITED STATES CORP.**

Dr. JOUBERT. Thank you. It is a great honor to appear before the Transportation Subcommittee of the House Interstate and Foreign Commerce Committee. I am going to make my presentation orally. If you want me to prepare a written statement later I would be delighted to do so.

Mr. FRIEDEL. You may do so if you wish.

Dr. JOUBERT. I represent the Bowaters United States Corp., which owns and operates papermills at Calhoun, Tenn., on the Hiwassee River which is a navigable tributary of the Tennessee River. Bowaters United States Corp. also owns and operates a papermill at Catawba, S.C.

The worldwide Bowater organization, which is a British organization, is one of the fifth or sixth largest producers of paper products in the world. Our mills in the United States, taken together, are among the largest producers of pulp and paper products in this country.

In addition to representing Bowaters, I am legislative chairman of the Southern Paper Manufacturers Traffic Conference, which is composed of 43 paper companies with mills in the South and Southwest, which manufacture about 98 percent of all paper products produced in these two regions.

Members of the Southern Paper Manufacturers Traffic Conference have an annual freight bill of about \$800 million. This conference voted unanimously to support the Kuykendall bill, the Blanton bill, and the Eckhardt bill, now before this subcommittee.

We also supported and I presented a statement in favor of H.R. 7610 in October 1967. I believe that Bowaters barges more extensively on the inland waterways system than any other paper company. Therefore, much of what I will say will pertain to Bowaters. Incidentally, by the inland waterway system I mean the great interconnected mid-continental rivers and canals, including the Mississippi, Missouri, Ohio, Illinois, Tennessee, and Warrior Rivers and the Gulf Intracoastal Waterway.

But I want it understood that many other paper companies in the Southern Paper Manufacturers Traffic Conference are also located on the waterfront and have a profound interest in barging.

First, as to the Bowaters interest. You will note where Calhoun is located on this map. Calhoun is situated directly on the waterfront of the Hiwassee River about 40 miles northeast of Chattanooga and about 70 miles southwest of Knoxville.

We barge from Calhoun, Tenn., to many points on the inland waterways system. For example, we barge from Calhoun down the Hiwassee, Tennessee, Ohio, Mississippi, and Intracoastal Waterway to Houston, Tex. We also barge to St. Louis, Baton Rouge, Rock Island, Louisville, Cincinnati, Kansas City, and Omaha. We also ship via

barge and truck to inland points from Houston, Baton Rouge, Rock Island, St. Louis, Cincinnati, and other river and canal ports.

When the Arkansas River is completed, we will barge to Tulsa, Okla.

I wish to stress that we have an extensive barge operation. For example, in 1968 we barged outbound 73,000 tons of freight of our total 485,000 tons production. We also barge inbound about 260,000 tons of pulpwood.

Incidentally, all of the above-mentioned 330,000 tons of barged freight is regulated.

As I say, we in the Southern paper industry and we in Bowaters are strongly in favor of the barge mixing legislation before this committee. The Supreme Court decision of October 1967, which invalidated barge mixing, said that if there were some inequity in the law it was up to Congress to correct the inequity. We strongly feel there is a serious inequity in section 303(b) of the Interstate Commerce Act and we urgently request Congress immediately to enact legislation which will continue the mixing of regulated and unregulated barges in the same barge tows.

We located our mill at Calhoun based on an ability to mix, to barge newsprint and pulpwood. That was a major factor in the location of mill. I know that to be a fact, because at that time I was employed with the Tennessee Valley Authority and I made the transportation studies that led to the selection of that site.

There is no question that barging gives us tremendous economies in freight costs to almost every point to which we barge. For example, when we started barging to Houston in 1955 the railroad rate from Calhoun to Houston was about \$17.70 as against a barge rate of \$12, including stevedoring and other handling at the port.

Now, the rail rate to Houston is about \$11 and barging was the major factor that reduced that rate. We gain large economies in transportation costs by barging to St. Louis and many other points. We also gain sizable savings in freight costs by barge to those ports and going beyond by truck. For example, we make barge-truck deliveries through Omaha and Houston. One of these significant movements is beyond by truck to San Antonio.

There is just no question that if you can't mix these barges of newsprint and ground wood paper in large barge tows that our barge rates are going to increase to such a high point that we will not be able to gain any economies from barging.

Mr. PICKLE. Let me interrupt you, Doctor. How much would they be increased? You say they will be so high. What do you estimate will be the increase?

Dr. JOUBERT. Dr. Ruppenthal's study indicates that barge operating costs per ton mile would increase from 2.3 mills to 3.34 mills, or by 47 percent. I believe the barge rates on paper products would also increase by that amount.

Mr. FRIEDEL. A 147-percent increase?

Dr. JOUBERT. Well, of the base, no; a 47-percent increase.

Mr. PICKLE. Perhaps I misunderstood the other day. I asked a question and I had the feeling that the barge people were saying, in effect,

if this exemption were taken away, that there would not be more than a 10 to 15 percent increase, is that correct?

I will ask my counsel. Do you recall that or was he talking about there would be only a 10 to 15 percent increase if the exemption was lost and they went ahead and had to comply with present regulations.

Dr. STEVENSON. I don't know. Someone made the statement. I don't recall who.

Mr. PICKLE. Mr. Hershey recommended, as I understood, there would be at least a 10 to 15 percent overall increase. That would be a little different than yours of 40. I think we ought to have a better estimate.

Dr. JOUBERT. Paper is a relatively high value commodity, different from most typical commodities on the inland waterways system and I believe paper would take a higher percentage increase than the average. However, I don't know exactly how much it would be, Congressman Pickle.

Mr. PICKLE. Your commodity is a regulated commodity?

Dr. JOUBERT. Yes, sir.

Mr. PICKLE. And you haul your products?

Dr. JOUBERT. By common carrier.

Mr. PICKLE. You do it at published rates?

Dr. JOUBERT. Yes.

Mr. PICKLE. But you still want the bulk exemption because it would allow larger tows and I assume that indirectly it would keep your rates lower even though they are published if this exemption were granted?

Dr. JOUBERT. I don't think that the bulk exemption is an issue as far as my company and my industry are concerned. All I want to do is continue to mix the paper barges in with these large tows. The regulation, versus deregulation issue has not been discussed within the Southern Paper Manufacturers Traffic Conference and I am not authorized to take a position on that particular point. We do want to include our paper barges in the large barge tows.

Mr. PICKLE. You want to mix them in with the tows?

Dr. JOUBERT. Yes, in with the larger tows.

Mr. FRIEDEL. As I get it when you speak of newsprint, you are talking about the big rolls of newsprint that go to the newspapers?

Dr. JOUBERT. Yes, sir; typically these rolls weigh about 1,800 pounds, are about 60 inches long, and 40 inches in diameter.

There is another point that has not been sufficiently stressed by the witnesses who testified here today. The point I wish to stress most strongly is that there is a severe, a very critical car shortage in the paper industry, that penalizes our industry and has actually caused some of our mills to close down.

We have created a national car supply committee, of which I am a member, and we are working with the ICC and the railroads trying to solve this car shortage.

If you take this barge mixing privilege from us, and force us from the waterways to rail carriage, you are going to worsen the already critical freight car shortage. In fact, the freight car shortage is becoming worse all the time.

You look at the number of new cars installed as against the cars being retired and the number of cars being retired still exceeds the new cars being installed. These are proven by the AAR's own figures.

There is another point I would like to stress, too. Inland navigation in the United States is in its bare infancy.

We have not yet done nearly all we can do in the way of carrying freight on this inland waterway system. I have seen the number of tons on the Tennessee River increase from 2.4 million in 1946 to 21.6 million in 1967. That tonnage should and will grow to a much higher figure. We should take no action which would prevent the public from making use of this tremendous facility.

Mr. PICKLE. May I interrupt? This committee is making no such recommendation.

Dr. JOUBERT. By destroying the mixing and not letting us ship by barge you would remove us, the paper industry, and Bowaters from the utilization of this inland waterway system. I think if we don't enact this law, you will in a sense handicap the development of inland navigation and the public use of it, the shipper's use of it.

Mr. PICKLE. This committee is not making a recommendation for the loss of exemption.

Mr. FRIEDEL. Does that complete your statement?

Dr. JOUBERT. I have a few more points to make, Congressman Friedel, and I would appreciate a chance. The most prosperous lines in the United States parallel the waterways. For example, the Gulf, Mobile and Ohio and the Illinois Central parallel the Mississippi River system from Chicago to New Orleans. Yet they are two of the most prosperous railroads in the United States. For example in the year 1968 the Illinois Central stood 16th in net railway operating income among all 66 class I railroads reported by the AAR. (See *Railway Age*, March 10, 1969.) The G. M. & O. stood 20th by that measure. In 1968 the Southern Railway system, which competes with the Tennessee, Ohio and Mississippi Rivers, stood fourth among all class I railroads in net railway operating income. The Louisville and Nashville, another water competitive rail line, ranked seventh in NROI. Almost without exception, the railroads which are nearest or compete most strongly with the waterways are the most prosperous lines.

There is another thing that involves Bowaters that makes this matter of tremendous importance to us. We are doubling the productive capacity of our newsprint mill in Catawba, S.C. As a result, we will have to ship greater and greater tonnages to western markets from our mill at Calhoun, which formerly served the Carolina, Virginia, and Florida markets almost exclusively. Therefore, we must have more instead of less barging from Calhoun.

Instead of barging 73,000 tons as we did in 1968, we should soon be barging 150,000 tons. If Congress fails to remove the prohibition against barge mixing, that barge tonnage will disappear altogether.

That completes my statement.

Mr. FRIEDEL. Any questions?

If not, we thank you very much.

The committee now stands adjourned.

(The following statements, letters, and telegram were received for the record:)

STATEMENT OF WILLIAM S. STORY, EXECUTIVE VICE PRESIDENT, INSTITUTE OF SCRAP IRON & STEEL, INC.

My name is William S. Story, Executive Vice President, Institute of Scrap Iron & Steel, Inc. (Institute), the national trade association representing approximately 1350 shippers, brokers and processors of iron and steel scrap and related commodities, and industry suppliers. My office is at 1729 H Street, N.W., Washington, D.C. 20006. This statement is made on behalf of the Institute and its membership.

Iron and steel scrap moves in significant volume on the inland waterways. Accordingly, bills designated H.R. 8298, H.R. 8376 and H.R. 8509 are of import to us. However, even if this industry were not a water shipper we would still be vitally concerned with the proposed amendments since the competitive input to the steelmaking process—iron ore—is a water amenable commodity.

The form of the competition between iron and steel scrap and iron ore was documented in detail before the Interstate Commerce Commission (ICC) in Ex Parte 256 and Ex Parte 259, wherein this Institute demonstrated the direct substitutability of iron ore and iron and steel scrap in steelmaking. The ICC recognized the merit of the presentation and ruled in Ex Parte 256 that the proposed increase on iron and steel scrap, higher than that proposed for iron ore, would be inappropriate "in view of the competition, shown on this record, between these commodities". (332 ICC 331)

Iron ore is a bulk commodity, thus it is exempt when moving via barge. Iron and steel scrap, however, is a regulated commodity when carried on the inland waterways as a result of an ICC decision (292 ICC 621) which, we believe, failed to appreciate fully the striking similarities that exist between iron and steel scrap and other commodities which have been accorded a "bulk" and, therefore, exempt status. The ICC decision was concerned, to a large extent, with the movement of the commodity on a basis other than "piece-by-piece", the Commission apparently having been convinced that scrap by varying sizes and shapes would be handled generally on an individual piece basis.

The record before the ICC might have been deficient in accurately portraying how scrap is generally handled (the original parties were both barge lines and the Institute was not involved), but there is no question that iron and steel scrap is "loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count". Moreover, though the individual pieces may not be consistently of identical or similar size, shape or form, they are loaded and unloaded without regard to how many pieces are handled at any one time.

The Institute is firmly convinced that iron and steel scrap is an exempt commodity within the purview of the proposed bills but respectfully requests that if these bills are approved the exemption be made clearly applicable to iron and steel scrap. A clarification of the word "bulk" to show it to be any commodity loaded and carried without wrappers or containers, received and delivered by the carrier without transportation mark or count "and normally handled other than piece-by-piece", would accord exempt status to this commodity which has all the significant characteristics of an exempt item but none of the advantages.

With the addition of language clearly and appropriately including iron and steel scrap within the purview of the exemption, the iron and steel scrap processor would remain a viable economic entity since he would have equality in transportation, at least on the waterways, when faced with competition from iron ore.

The Institute supports the concept of mixing regulated and unregulated barges in the same tow whether or not iron and steel scrap is accorded its rightful status as an exempt bulk commodity. The industry recognizes that to prevent mixing of such tows would be to perpetuate inefficiency, cause delay and needlessly raise the cost of water transportation. The march of technology should not be blocked and to deny legally to the water carriers the flexibility they have developed operationally would indeed be contrary to the public interest.

As important as is the extension of the waterway bulk commodity exemption to iron and steel scrap, such extension would be most damaging to this industry where the railroads are concerned. Since the water exemption already applies to our competitor—iron ore—and since there is no anticipation that such exemption would be repealed (the present bills would, on the contrary, expand the exemp-

tion), the iron and steel scrap processor must have equality to continue as a shipper by water. Where the railroads are involved, however, both iron and steel scrap and iron ore are regulated commodities.

The magnitude of the rate discrimination against iron and steel scrap and in favor of iron ore existing in the present railroad rates was documented in Ex Parte 259. The following summary table showing the condition was admitted in evidence.

1966 REVENUE PER TON

	Iron and steel scrap (40211)	Iron ore (1011)
US to US.....	\$4. 12	\$1. 64
OFF to OFF.....	3. 78	2. 22
SOU to SOU.....	3. 76	1. 90
WTL to WTL.....	4. 40	. 98
MTP to MTP.....	4. 02	2. 54

Note: All figures are in net tons.

As noted previously, the ICC prevented further rate discrimination in its last two decisions (Ex Parte 256 and Ex Parte 259), but the basic rate relationships demonstrated above continue in their distorted pattern. The presence of an informed and impartial third party—the Interstate Commerce Commission—is the only protection the iron and steel scrap processing industry enjoys where rates favoring its competition are involved.

Ours is a small-scale industry, composed of many small, local processors shipping from a multitude of origins to relatively few destinations. The major consumers to whom we ship generally will not accept delivery other than by rail. Iron and steel scrap is, on outbound shipments, virtually a "captive commodity" to the railroads except for the fortuitous circumstances where waterside location or a consumer willing to accept truck shipments exist. As a "captive shipper," this industry could not compete without the protection inherent in the Interstate Commerce Act and we respectfully request that, regardless of your decision about the so-called "mixing rule" or the extension of an exempt status to iron and steel scrap, you do not extend any exemption provisions to the railroads. It is the ICC's power to control discrimination which, where transportation by rail is concerned, enables the iron and steel scrap processing industry to compete.

There is no need, I am sure, to point out to this Subcommittee the major problem of solid waste disposal that confronts our nation today. The problem of junk car abandonment, solid waste accumulations, and the need to beautify our landscape are all well known to you. It is the iron and steel scrap processor who is a key element in the solution for it is he who has the skill, investment and "know-how" to process much of this accumulation. However, unless he can market the prepared commodity, he cannot perform this service.

The price of prepared scrap suitable for re-melting into steel is depressed at present and has been for the past few years. At the same time, the cost of labor and equipment has risen sharply thus catching the scrap processor in a "tight squeeze". Moreover, to complicate the problem, transportation rates have increased dramatically. With transportation the key item it is in the iron and steel scrap processing industry, the need is paramount for just, reasonable and non-discriminatory rates.

Thus, where inland water carriers are concerned, the iron and steel scrap processing industry needs the bulk exemption to remain competitive with iron ore which is presently exempt. Where the railroads are concerned, however, the record of discriminatory rates severely distorting the competitive picture of iron and steel scrap vis-a-vis iron ore, is evidence sufficient to convince us that we must have regulated transportation if we are to exist.

With transportation equity established between competing commodities, the iron and steel scrap processing industry will be able to actively pursue its important role of re-cycling obsolete iron and steel scrap into the steelmaking process so that, among other public interest advantages, natural resources (iron ore) can be conserved and the solid waste problem can be controlled. This industry is prepared to serve; we ask only that you allow us to remain competitive by extending equality in transportation conditions to our product which daily faces a favored competitor.

STATEMENT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives whose membership represents approximately 5,700 of the marketing and purchasing cooperative associations who serve approximately 3 million farmer memberships in all parts of the country supports legislation currently before your committee designed to remove restrictions on the application of the exemption provided in section 303(b) of the Interstate Commerce Act.

The Council views favorably H.R. 8298, H.R. 8376 and H.R. 8509 which are identical bills and would permit modernization of the statute to conform to the latest technological advances in the water carrier industry. We *do not* support the amendment in the nature of a substitute to these bills which was proposed by the Interstate Commerce Commission in their statement before the Subcommittee on Transportation and Aeronautics on May 20, 1969. The bills before the committee would remove the parenthetical expression in 303(b) which defines bulk commodities "in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939." The amendment suggested by the ICC would not disturb this definition.

The Council's authority for support of this legislation is contained in a policy resolution adopted by its Delegate Body in January, 1969, reading as follows:

"Bulk Commodities Exemption—Recognizing the needs of farmers to benefit from improved technology in transportation, the National Council favors legislation which will eliminate the restrictive interpretations which have been given to the Bulk Commodities Exemption, dry or liquid, applicable to inland waterways, interstate or coastwise transportation."

Since testimony in the record of hearings on this legislation has adequately developed the history of improved technology in the water carrier industry, we will not burden the record with another recitation but will confine this statement to two items primarily of economic interest.

First, we believe this legislation should be enacted before the deadline of July 1, 1969. The railroads have again adopted a "me too" position—If water carriers are exempt, then we should be also. The Council as a general policy supports reliance on competition rather than regulation as the foundation for national transportation policies; however, there is not now before this committee a railroad deregulation bill, and we believe the bills actually before the committee are meritorious in their own right. Should the railroad industry, or any other interest, come forward with a deregulation bill, then the Council will certainly take a position on the matter, but it is pointless to consume the committee's time with propositions in the abstract. We believe that it is in the interest of our members and of the shipping public that Congress act now to remove this anchor from barge transportation.

Second, we believe this legislation should be enacted because it will continue to permit agricultural shippers to take advantage of the lowest cost mode where it is available. We have read the independent study of Dr. Karl M. Ruppenthal, Robert R. Piper and Brendan Quirin and agree with the general conclusion that if the mixing rule, the prohibition against mixing regulated and unregulated commodities in the same tow, goes into effect the cost of barge transportation will increase. It is a simple economic fact that, if costs of providing transportation are increased, then the rate level or charge to shippers is also increased. In this era of inflation when the nation's farmers are caught in the cost-price squeeze, increased transportation costs due entirely to an archaic rule would be intolerable. Our producers have severe competition in world markets for the produce of American farms and neither our country's balance of payments nor farmer's income can afford the luxury of artificially high freight rates.

In conclusion, we urge the enactment of H.R. 8298 or a similar bill which will permit the continued efficiencies of mixed tows and request that all commodities which can now be transported in bulk be made exempt. It appears irresponsible to the public interest to permit inefficiencies to be built into a statute for the sake of protecting the interest of one giant industry. In these inflationary times, the shippers and the consumers, as well as the farm community, need all the help Congress can give to combat inflation. The Council, therefore, respectfully urges prompt and favorable action by your committee on this legislation.

STATEMENT OF ALEX S. CHAMBERLAIN, PRESIDENT, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

Mr. Chairman and Members of the Subcommittee, my name is Alex S. Chamberlain of Louisville, Kentucky. I am President 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 legislation to repeal the mixing rule, such as identical bills H.R. 8298, 8376, and 8509.

For 74 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 40 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 evident in the form of reduced costs of electric power, gasoline, food stuffs, household appliances and countless other consumer goods. They have manifested themselves also 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 represents 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 efficient 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 the public of benefits resulting from waterway improvements and technological developments in the barge and towing vessel industry. We strongly urge the passage of H.R. 8298 or any of the identical bills pending before the Committee.

STATEMENT BY ALAN GUMBERT, PRESIDENT, THE WATERWAYS ASSOCIATION OF
PITTSBURGH

Mr. Chairman and Members of the Subcommittee, my name is Alan Gumbert 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 legislation to repeal the mixing rule, such as identical bills H.R. 8298, 8376, and 8509.

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.

H.R. 8298 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 the passage of this or any of the pending identical bills.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 20, 1969.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The amendment proposed in H.R. 8298, and companion bills, presently the subject of hearings before your Subcommittee, may have some far-reaching consequences which are not immediately apparent. As one who is interested in seeing that the competitive position of the western sugar industry is not endangered by inadvertent discriminatory legislation. I respectfully request your Subcommittee's scrupulous study of this measure.

A substantial quantity of western sugar, including that produced in Hawaii, is presently being marketed in the midwestern states in accordance with the national sugar program. The sugar is shipped to these states by regulated rail carriers on a delivered price basis. This midwestern market can also be reached by southern sugar by means of barge service up the Mississippi, Missouri and Ohio Rivers. Obviously, this competitive situation would be virtually destroyed if water carriers to these areas are granted special governmental dispensation to provide unregulated service.

Indeed, the legislation under consideration would produce such inequitable result. Enactment of H.R. 8298 would make lower rates available to shippers using unregulated bulk barge service. This in turn would enable shippers of southern sugar to undercut the price of western sugar and make the latter, for all intents and purposes, non-competitive.

The foregoing remarks, citing sugar as an example, are equally applicable to other commodities which are presently transported to a given market area by trucking lines, railroads and water carriers.

For the stated reasons, it is strongly urged that your Subcommittee table H.R. 8298 and its companion bills, and take no further action thereon.

It is requested that this letter be included in the record of hearings on this legislation.

Aloha and best wishes.

Sincerely,

SPARK MATSUNAGA,
Member of Congress.

CONSOLIDATED BLENDERS, INC.,
Fremont, Nebr., May 13, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House Interstate
and Foreign Commerce Committee, Washington, D.C.

DEAR SIR: Please be advised that as shippers of bulk commodities on the inter coastal waterways of these United States, we are vitally interested in enabling legislation to up date our existing Interstate Commerce Act. To this end, we support H.R. 8298, H.R. 8376 and H.R. 8509 which would amend section 303B of the Interstate Commerce Act. The effect of these bills would be as follows:

1. To repeal the custom of trade provision which places a restriction on dry bulk commodities unless transported in bulk prior to June 1939.

2. To repeal limit which restricts to three the number of dry bulk commodities which may be carried in a tow of vessels at any one time.

3. To repeal the prohibition against carriage of both regulated and non regulated commodities in the same tow of vessels at any one time.

We believe the passage of the above mentioned legislation is necessary to sustain the economic growth of water transportation and will have the effect of providing the means by which freight rates can be reduced through maximum utilization of existing and future equipment.

Respectfully,

WINSTON RASHLEIGH,
Office Manager.

NEBRASKA CONSOLIDATED MILLS Co.,
Omaha, Nebr., May 14, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House Interstate
and Foreign Commerce Committee, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE FRIEDEL: It is our understanding house bills 8298, 8376 and 8509 are more or less identical in their coverage of the problem stemming from the application of Section 303B of the Interstate Commerce Act. As regular users of river transportation we are deeply concerned with its future.

Public funds have been used to develop this system and it is therefore inconsistent to limit the usage of this resource with an archaic restriction such as Section 303B.

In our judgment the public interest will be served with the passage of any one of the above bills. We solicit and urge your support.

Cordially,

E. J. WEIGEL,
Vice President, Traffic.

ALLEGHENY LUDLUM STEEL CORP.,
BRACKENRIDGE WORKS,
Brackenridge, Pa., May 19, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, U.S. House of
Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: This letter has reference to House Bills H.R. 8298, H.R. 8376, and H.R. 8509, scheduled for hearings by the House Subcommittee on Transportation and Aeronautics on May 20, 21 and 22, proposing legislative remedy to the dry bulk exemption clause of Section 303(b) of the Interstate Commerce Act.

We receive a considerable quantity of raw materials via barge at our Brackenridge, Pennsylvania Works. It is our opinion the barge lines must be permitted

to mix regulated commodities with exempt commodities without the loss of the exemption. To do otherwise, the barge lines would be compelled to separate their tows; thereby, losing the inherent advantage as low cost carriers. The technological advances made by the barge lines would become null and void and the inevitable increases in operating costs would, as a matter of economics, be passed on to the shippers and receivers.

We shall appreciate your support and request that our remarks be included in the record.

Sincerely,

B. B. CARUSO,
Director of Traffic and Transportation.

GEORGIA PORTS AUTHORITY,
Atlanta, Ga., May 19, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Please refer to H.R. 8298 by Hon. Dan H. Kuykendall of Tennessee; H.R. 8376 by Hon. Bob Eckhardt of Texas, Hon. Ray Blanton of Tennessee and Hon. Peter N. Kyros of Maine; and H.R. 8509 by Hon. Hale Boggs of Louisiana.

The Georgia Ports Authority maintains and operates modern barge terminals, with necessary accessorial facilities, at Augusta, Bainbridge and Columbus, Georgia. We also handle considerable cargo transported by barge at our deep-water terminals in Savannah and Brunswick, Georgia. This Authority has a vital interest in the welfare and continued efficient operation by the barge line industry.

We urge these bills be given an early and favorable hearing so that corrective legislation can be enacted before the July 1, 1969 deadline set by the Interstate Commerce Commission.

Your cooperation is respectfully requested in this connection.

Sincerely,

J. D. HOLT, *Executive Director.*

GRAIN & FEED DEALERS NATIONAL ASSOCIATION,
Washington, D.C., May 20, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 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 H.R. 8298 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.

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 tow-boat 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 H.R. 8298 are designed to relieve are obstacles to the further operation 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. Additionally, we are now witnessing an acute freight car shortage and any action which would divert water borne traffic to the railroads would create havoc for the shipper of bulk commodities. We respectfully urge the subcommittee to help us avoid this situation by seizing this opportunity for relief and recommending H.R. 8298 for prompt passage.

Sincerely yours,

JOHN H. FRAZIER, JR.,

Chairman, Transportation Committee.

MONSANTO CO.

St. Louis, Mo., May 21, 1969.

HON. SAM N. FRIEDEL,

Chairman of the Transportation and Aeronautics Subcommittee,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: Hearings have been scheduled by your subcommittee this week on Bills HR 8298, HR 8376 and HR 8509 relating to amendment to section 303(b) of the Interstate Commerce Act which would give the river barge operators the ability to handle exempt dry bulk commodities in their tows with regulated commodities and which is now being threatened by recent interpretations of the law.

I wrote you on September 28, 1967 at which time HR 7610 in support of similar legislation and I should like to go on record again with your subcommittee as being in complete accord with the subject legislation.

Monsanto Company has 13 plants located on navigable water with large and other marine facilities and a substantial movement of both liquid and dry bulk cargoes by water. Specifically in 1969 Monsanto will ship in excess of 600,000 net tons of Salt and Fertilizers by water on the inland waterways. Marketing of Salt is very highly competitive with transportation and handling costs representing a very substantial part of the delivered cost of this product. As previously stated, Monsanto is a large shipper on the inland waterways with tonnage growth exceeding 500% in the past ten years. Much of this growth can be directly attributable to the technological innovations and improvements made by the barge carriers during these years and their ability to pass on these economies of volume movements which in turn has enabled our company to distribute its products in the most economical manner.

It is believed that your subcommittee will agree that the present provisions of section 303(b) of the Interstate Commerce Act which were enacted in 1940 when barge transportation on our inland waterways was in its infancy are now archaic, and there is urgent need for modernization. Approval of the proposed amendment will eliminate these ambiguities in the Act and will enable both regulated and non-regulated water carriers to efficiently conduct their business and permit the efficiency and continued use of innovation and technological improvement made in their transportation services over the years.

Large volume tonnages must continue to enjoy the flexibility that prevailed prior to the interpretation of the law by the ICC and the courts and failure to enact the proposed amendments will result in increased cost to the barge lines and will materially lessen or destroy the value of favorable geographic locations of industry situated on navigable waterways to take advantage of lower water costs.

It is imperative, therefore, that the exemption provided in section 303(b) in Part III of the Interstate Commerce Act be amended as suggested in the subject bill which would give both certificated and non-certificated carriers the ability to handle exempt dry bulk commodities in their tows with regulated commodities which freedom they currently enjoy under section 303(d) of the Act on liquid bulk commodities.

The ICC have set a compliance date of July 1, 1969 for the barge companies to observe the courts interpretation and rulings. Consequently, action in this session of Congress is important and enactment will bring the law into harmony with current modern conditions.

Your full support of the proposed amendment is respectfully requested.

Sincerely,

M. E. ITEN,

Manager, Water Transportation.

THE PROPELLER CLUB OF THE UNITED STATES,

New York, N.Y., May 20, 1969.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: The Propeller Club of the United States during the current year took a strong position for the repeal of the so-called "no mixing" rule with which H.R. 8509, 8298 and 8376 deal. The Club took a similar position in 1967 and 1968. We understand that these bills are being heard before your Committee.

For the record and such other use as the Committee may find appropriate, we submit the official position of the Propeller Club on this important issue.

Best wishes and sincere regards.

Very truly yours,

THOS. E. STAKEM, *President.*

* * *

MAY 1, 1969.

THE PROPELLER CLUB OF THE UNITED STATES, POSITION No. 5—1969

REPEAL OF THE NO-MIXING RULE FOR BARGE OPERATIONS

Background

A recent interpretation by the Interstate Commerce Commission, now upheld by the Courts, prohibits regulated water carriers from transporting unregulated dry bulk commodities in the same tow of vessels with regulated commodities. To do so would subject unregulated commodities (by far the bulk of the trade) to regulation. Larger horsepower and improved techniques make it inefficient and uneconomical to operate with less than maximum loads in barge flotillas. To assemble maximum tonnage consistent with economic operation requires removal of the no-mixing rule.

An Interstate Commerce Commission's interpretation under Section 303(b) of the Interstate Commerce Act considers a flotilla of any number of barges under tow as a single vessel. The Act needs amendment to retain a barge's identity as an individual vessel.

The amendment being sought would remove two additional impediments to modern barge operations: (1) it would terminate the rule that, in order to transport bulk commodities exempt from regulation, no more than three such commodities can be carried at one time, and (2) it would eliminate the provision that, in order to transport a dry bulk commodity exempt from regulation, such commodity must have moved in bulk prior to 1940.

Legislation to accomplish these purposes is now under consideration by the Congress. It has the support of the domestic water carrier industry, maritime labor and shippers. The Departments of Agriculture, Transportation and Justice endorsed the legislation when it was before the Congress in 1968 and the ICC at the same time gave its conditional endorsement.

Position

The Propeller Club of the United States believes that amendment to Section 303(b) of the Interstate Commerce Act to (1) repeal the mixing rule, (2) re-

move the three-dry bulk commodity limitation, and (3) remove the custom of the trade date, will allow realization of greater efficiency in inland waterway transportation and in turn benefit the entire economy of the United States and urges that such action be taken. If prompt amendatory legislation cannot be achieved, the Propeller Club calls upon the Congress to request the ICC to extend the compliance date from July 1, 1969, to July 1, 1970, to provide added time for consideration of appropriate legislation.

VALMONT INDUSTRIES, INC.,
Valley, Nebr., May 20, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman of Subcommittee, Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR CONGRESSMAN: Your attention is directed to Bills H.R. 8298, H.R. 8376 and 8509. These bills are similar to H.R. 7610, H.R. 10315 and H.R. 10659 which were before the 90th Congress. We supported those bills at that time and urge your favorable reporting.

We feel the effect of the mixing rule interpretation would hamper the assembly of larger tows because exempt bulk traffic cannot be combined in tows containing more than three bulk commodities or any non-bulk commodity. You are aware that tow boats are much more powerful and efficient than they were in 1940 and are capable of handling larger tows of barges.

It is imperative that this legislation be passed so that the Barge and Towing Industry can continue to achieve the efficiency for which they have been noted.

Your assistance on this vital legislation is solicited.

Yours very truly,

ROBERT B. DAUGHERTY, *President.*

BUNGE CORP.,
New York, N.Y., May 22, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, U.S. House of Representatives, Washington, D.C.

DEAR SIR: As a major exporter of grain, our company is a substantial user of inland water transportation, and the cost of this transportation will unquestionably increase to the competitive disadvantage of United States grain, unless legislation is passed eliminating the prohibition of the mixing of exempt with nonexempt commodities in the same tow.

We believe that this would be in the national interest as it would allow commodities important to the national export effort to continue to be brought to port at the most economical transportation cost. Therefore, we urge passage of the necessary legislation especially eliminating from Section 303(b) of the Interstate Commerce Act any reference to the existing customs of the trade as of June 1, 1939 as well as the stipulation that two or more vessels while navigated as a unit shall be considered to be a single vessel.

We would appreciate it if this statement is included in the record.

Respectfully yours,

C. E. BRASMER.

AMERICAN INSTITUTE OF MERCHANT SHIPPING,
Washington, D.C., May 27, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: The American Institute of Merchant Shipping constitutes 38 member lines which own 539 merchant ships representing 62 per cent of all active privately-owned tonnage registered under the U.S. flag. Aggregating over 7.5 million deadweight tons, these ships include the vast majority of American-flag vessels constructed since World War II and all of the modern U.S. cargoliners built in the 1936 Merchant Marine Act's replacement program.

The American Institute of Merchant Shipping supports H.R. 8298, introduced by Mr. Kuykendall on March 5, 1969; H.R. 8376, introduced by Messrs. Eckhardt, Blanton and Kyros on March 6, 1969; and H.R. 8509, introduced by Mr. Boggs on March 10, 1969. We request that this letter setting forth the Institute's support of the bills in question be made part of the record of the Subcommittee's hearings which terminated on Wednesday, May 21, 1961.

These bills would amend Section 303(b) of the Interstate Commerce Act to remove the prohibition against the transportation of regulated commodities in the same tow of vessels with bulk exempt commodities without regulating all the commodities. It would also allow the carriage of more than three bulk commodities in a tow of vessels without subjecting the entire tow to regulation and would remove the custom-of-the-trade date of June 1, 1939 which controls what dry bulk commodities may be carrier exempt. The Institute favors the passage of this legislation for the reasons set forth by the numerous witnesses who appeared in favor of this legislation last year before Senator Lausche's Subcommittee and both last year and this before your Subcommittee.

We greatly appreciate your attention to this matter.

Sincerely,

JAMES J. REYNOLDS, *President.*

DIAMOND CRYSTAL SALT CO.,
St. Clair, Mich., May 27, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR SIR: In a letter of March 14, 1967 and in a wire of October 16, 1967 and on June 3, 1968 I registered Diamond Crystal's strong support for favorable action on H.R. 7610 which would allow barge carriers to continue to mix bulk exempt and nonexempt commodities on the same tow. The Diamond Crystal Salt Company feels strongly that the failure to extend this right would materially weaken the economic position of the common carrier barge industry and would result in inefficient use of transportation equipment.

In a time of inflation it is particularly critical that U.S. industry and carriers take advantage of every possible opportunity to accomplish efficient production and distribution of our products. We need efficient distribution to meet foreign competition and maintain the favorable trade balance so essential to our national welfare.

Diamond Crystal strongly supports passage of H.R. 8298, H.R. 8376 and H.R. 8509 which will provide a legislative remedy to this problem.

Respectfully submitted,

H. G. MILLER,
General Manager, Distribution.

MID-SOUTH TOWING CO.,
Tampa, Fla., May 27, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Interstate and Foreign Commerce Committee,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE FRIEDEL: We wish to add the name of our company to the list of supporters of the three bills—H.R. 8298, H.R. 8376, and H.R. 8509—to amend Section 303(b) of the Interstate Commerce Act to modernize restrictions on the carriage of bulk commodities.

We support these bills as written, and would be opposed to any amendment, or to any alternate proposal. We particularly oppose any amendment which would extend the bulk commodity exemption to railroads unless they would be subject to the same anti-trust provisions which apply to business generally.

Very truly yours,

NOBLE L. GORDON, *President.*

POWER TRANSPORTATION Co.,
Tampa, Fla., May 27, 1969.

HON. SAMUEL N. FRIEDEL,
*Chairman of Interstate and Foreign Commerce Committee,
House Office Building, Washington, D.C.*

DEAR SIR: This is to advise you of our support of legislation proposed in H.R. 8298, H.R. 8376 and H.R. 8509, now before your Committee, to eliminate restrictions upon the transportation of bulk commodities by water carriers.

The passage of any one of these bills would eliminate a lot of confusion in the industry, and would result in increased efficiencies which would in turn reduce the cost of transportation to the shipper and the cost of goods to the consumer.

While we are in agreement with these three bills, which we understand are identical, we are opposed to any amendments, particularly amendments which would extend the bulk commodity exemptions to railroads, whose rate making practices are exempt from antitrust laws.

Yours very truly,

THOMAS A. KIRKPATRICK,
Vice President.

UPPER MISSISSIPPI TOWING CORP.,
Minneapolis, Minn., May 27, 1969.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Our company has been in business since 1937 and we operate barges on the entire inland waterways system. We appeared at the hearing held by your Subcommittee on October 4, 1967 and presented testimony in favor of H.R. 7610 and companion bills.

At this time we would like to express our support for H.R. 8298, H.R. 8376 and H.R. 8509. Enactment of this legislation will permit the water carrier industry to provide efficient and low cost transportation which will directly and indirectly benefit the entire country.

We believe that it is essential that the legislation:

- (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 actually has an artificial limitation on shipments of bulk commodities.
- (3) Delete that sentence in Section 303(b) which treats two or more vessels in a single tow as but a single vessel.

Our support of the pending legislation is predicated on the enactment of legislation embodying all three of the above stated points. These three points are very much interrelated and the deletion of any one of the three points would cause our company to withdraw its support of the legislation.

Yours very truly,

W. G. BASKERVILLE, SR., President.

ELECTRO-COAL TRANSFER CORP.,
Tampa, Fla., May 28, 1969.

HON. SAMUEL N. FRIEDEL,
*Chairman of Interstate and Foreign Commerce Committee,
House Office Building,
Washington, D.C.*

DEAR SIR: We support H.R. 8298, H.R. 8376 and H.R. 8509, which are being heard by your committee, and which are intended to modify the restrictions in movement of bulk commodities by water.

These bills are intended to eliminate useless restrictions in movement of bulk commodities, and will permit more expeditious handling of tows. They cannot

possibly harm any segment of the transportation industry, and can only result in benefits to the shipper and the ultimate consumer public.

We note that the railroads would amend these bills to extend the bulk commodity exemption to them, but until and unless they give up their anti-trust exemption in fixing rates, we would oppose such amendment.

Very truly yours,

PAUL C. ZEMPEL,
Vice President and Secretary.

GULF COAST TRANSIT CO.,
Tampa, Fla., May 28, 1969.

Re H.R. 8298, 8376 and 8509.

HON. SAMUEL N. FRIEDEL,
Chairman of Interstate and Foreign Commerce Committee,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: Will you please record our support of the above legislation now before your committee to ease the restrictions on water transportation of bulk commodities.

The present restrictions are archaic and are not compatible with present day demands upon water carriers. Their only effect is to increase cost of operations, and thus costing shippers and the public more. They should by all means be repealed by the proposed bills.

We are not in favor, however, of extending the bulk commodity exemptions to railroads because they are not subject to anti-trust laws. In the fixing of their rates by collusive selective rate agreements which are not subject to anti-trust laws, they could cause great harm to the waterway industries if granted this exemption.

Very truly yours,

WILLIAM H. VAUGHT,
Vice President.

MORTON SALT CO.,
Chicago, Ill., May 28, 1969.

Subject: Bills H.R. 8298, H.R. 8376 and H.R. 8509.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics,
U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE FRIEDEL: On behalf of Morton International, Inc. of 110 North Wacker Drive, Chicago, Illinois 60606, may I respectfully request that you accept this letter in favor of approval of the above Bills. These Bills are similar to Senate Bill 1314 which we supported last year, and they propose amendments to Section 303(b) of the Interstate Commerce Act by (1) 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)", and (2) striking the third sentence in its entirety.

Morton International, Inc. through its salt and chemical divisions respectively ships in excess of 1,500,000 tons by barge on the Inland Waterways System of the United States. It is strongly opposed to any restrictions against common and contract operations of the for-hire barge industry which might result in unwarranted cost increases caused by technical and inflexible rules imposed by these carriers.

The parenthetical expression defining bulk commodities in terms of custom of the trade as of June 1, 1939, has long worn out its usefulness and should be eliminated in the interest of modifying and streamlining Part III of the Interstate Commerce Act.

The provision defining two or more vessels, while navigated as a unit, as a single vessel, should be eliminated from the Act by the Legislature since under a recent U.S. Supreme Court decision, the barge carriers can no longer mix exempt and non-exempt commodities, or four or more bulk commodities in a single tow, as in the past. As a result of this restriction, large tows consisting of many bargeloads of miscellaneous bulk traffic or a mixture of barges containing exempt or non-exempt freight can no longer be made up, thus reducing the efficiency and flexibility of the barge operators considerably. This

inflexible restriction can only result in increased water costs for companies such as ours which desperately need low water transportation costs to market heavy-moving bulk commodities economically. Furthermore, from an overall water carrier industry standpoint, failure to allow mixing in tows represents a setback of many years to the water carrier industry as a whole.

I urge that you and all Members of the House Subcommittee approve these Bills on behalf of both the water carriers and the users of water transportation and that this memo be entered in the record.

Respectfully submitted.

C. F. FORGUE,
General Traffic Manager.

NATIONAL GRANGE,
Washington, D.C., June 2, 1969.

Re H.R. 8298, H.R. 8376, H.R. 8509.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Transportation Counsel of the National Grange attended all sessions of the hearings before your subcommittee on May 20, 21, and 22, 1969, on the above designated bills to amend Section 303(b) of the Interstate Commerce Act regarding the so-called water carrier mixing rule—and similar bills. He took note of the several times expressed wish of one or more members of the subcommittee that representatives of the general public, or interested parties other than the several modes of transportation directly or indirectly involved, give their views regarding the legislation. As a result, this communication is being directed to you for the record.

The National Grange is a farm and rural-urban family organization representing 7000 community Grange organizations in rural America. In all our aspects, as the representative of our members, the farming community of the nation and the general public, we have for many years had and presently have a considerable, even vital, interest in the matter under consideration.

With certain qualifications, Section 303(b) authorizes barge operators to transport up to three dry bulk commodities in a single vessel without being subject to regulation by the Interstate Commerce Commission. One qualification is that an exempt dry bulk commodity is defined as one that was handled and transported in bulk on June 1, 1939. Secondly, two or more barges while navigated as a unit (in a single tow) are considered to be a single vessel. Perhaps of even more importance at the present time under these circumstances, as a result of decisions of the Interstate Commerce Commission which were upheld in the Federal Courts, non-exempt (regulated) commodities may at no time during the course of the tow be carried in the same tow or flotilla ("mixed") with otherwise exempt bulk commodities without the exemption being lost.

So drastic would be the effect of the above decisions on the normal and historic operations of the barge lines that the Interstate Commerce Commission at the instance or with the approval of Congress has postponed the enforcement of the "mixing rule" until July 1, 1969. In other words, only at that time will the barge operators be faced with the full impact of Section 303(b) and forced to change their existing method of operations—unless remedial action is taken by Congress.

There has been considerable testimony before your subcommittee regarding the past changes in barge operations that have been brought on by technological improvements in the industry—more powerful towboats, larger barges and larger tows—and that are foreshadowed by future, further improvements. Also there has been considerable testimony regarding the changes in barge operations that complete enforcement of Section 303(b) will bring unless either the presently exempt barge operations are to become regulated or Congress takes needed action. Barring one of these alternatives the barge operators will have to break up present day tows into separate exempt and non-exempt segments. Either they will have to use smaller and more numerous tows or delay movement of barges until enough have been accumulated in each category at a specific location to make up separate tows large enough to be moved with maximum efficiency. In the first case there is increased cost and in the second decreased service.

What choice individual barge operators or the industry generally might make under these circumstances is immaterial. There is, in our opinion, no valid reason why barge operators and, more importantly, those that use their services to transport dry bulk commodities, should be required to accept less satisfactory transportation conditions than are now available—and probably forego even more advantageous conditions in the future. It is important to the farming and consuming communities of the nation and to the public generally that dry bulk commodities such as grain, soybeans and fertilizers move to the users at lowest possible cost; this is perhaps particularly true in connection with the export to other countries of the excess production of American farms.

As a significant side-effect of lessened use of barge lines because of increased cost or poorer service it should be considered that greater demand for railroad cars would aggravate the existing and perennial shortage of such cars.

There are, of course, various actions that Congress could take. The Interstate Commerce Commission, while expressing a preference for complete repeal of the Section 303(b) exemption, has tendered, at the instance of Congress, legislation that would permit the mixture in the same tow of regulated commodities and commodities that would otherwise be exempt, without changing either the provision that defined dry bulk commodities as of June 1, 1939, or the provision that includes within the definition of "vessel" all barges operated in a single tow.

We submit that this substitute of the Commission for H.R. 8298, H.R. 8376 or H.R. 8509 is unsatisfactory. Each of these three bills would delete the definition of a flotilla as a single vessel and delete the June 1, 1939 cut-off date in the definition of dry bulk commodities. The Commission, to the contrary, would complicate, not simplify, the statutory situation. It would retain a definition of bulk commodities which it acknowledged "has resulted in much confusion and some litigation". In this respect and in its retention of the "vessel" definition, the Commission would deny the nation the advantages of increased efficiency and advanced technology.

A single barge may now contain half the tonnage of an entire railroad train and a flotilla of barges may change greatly in number or component parts in its passage up or down a waterway. Forty barges may become twenty or even ten or less or vice versa. What has become a flotilla of forty barges may easily contain five dry bulk commodities, instead of the three allowed by the exemption. Moreover, what started out downstream as such a forty barge flotilla may become a smaller flotilla with only three dry bulk commodities upstream. There is no magic associated with the number "three" when related to the transportation of forty (or more) separate units of carriage. There may be some reason for limiting a single barge to three bulk commodities. We understand that the "rationale" or reason therefore stemmed from carriage on the Great Lakes. Whatever the reason it does not appear that it can do any harm if related to a "vessel" of one modern barge.

On these premises and the testimony before your subcommittee, The National Grange supports the approval and passage of H.R. 8298, H.R. 8376 or H.R. 8509.

Sincerely,

JOHN SCOTT,

Master, the National Grange.

[Telegram]

NEW ORLEANS, LA.,

May 28, 1969.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

We strongly support H.R. 8298, H.R. 8376 and H.R. 8509. We strongly support all provisions of the bills. Deletion of any provisions such as proposed by the Interstate Commerce Committee would cause considerable hardship and discriminate against carriers such as us who are exempted from regulation. The whole proposal must be effected. Everyone has agreed on this for a long time. We would appreciate your making this part of the hearing record. We also will appreciate favorable consideration of the bills.

W. C. NEAL,

Vice President Oil Transport Co., Inc.

(Whereupon, at 12:25 p.m., the hearing was adjourned.)