WATER CARRIER MIXING RULE

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 8298

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

SEPTEMBER 22, 1970

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WATER CARRIER MIXING RULE

TUESDAY, SEPTEMBER 22, 1970

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

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 5110, New Senate Office Building, Hon. Ernest F. Hollings, presiding.

Present: Senators Hollings and Baker.

Senator HOLLINGS. The committee will please come to order.

OPENING STATEMENT BY THE CHAIRMAN

This hearing is concerned with the so-called barge mixing rule legislation, H.R. 8298. That bill has been passed by the House of Representatives and in amended form is now before this committee.

The mixing rule has been before the committee before in 1967. Senator Pearson conducted the hearings, and the committee approved a bill, S. 1314, which attacked the problem somewhat differently than does H.R. 8298.

Today the Subcommittee on Surface Transportation will hear from numerous witnesses representing several different points of view regarding this legislation.

Because it is not possible during these hectic days in September to schedule more than 1 day of hearings on H.R. 8298, and because so many persons desire to testify, it has been necessary to restrict to 10 minutes the time available for each witness.

This restriction on all presentation is made with the understanding the written material may be submitted for the official hearing record upon request.

All of the information provided the committee will be given their careful consideration.

Among those who have already submitted statements for the record but who will not appear personally are John W. Scott, Master, The National Grange, Mr. Haddock, executive director of the AFL–CIO Maritime Committee, and Scott Elder, general counsel, Lake Carriers' Association in Cleveland.

Staff member assigned to this hearing: A. Daniel O'Neal.

(The bill, agency comments, and statements referred to follow:)

91ST CONGRESS
2D SESSION

H. R. 8298

IN THE SENATE OF THE UNITED STATES

AUGUST 13, 1970

Read twice and referred to the Committee on Commerce

AN ACT

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 to read as follows:

"(b) Nothing in this part, except the provisions of section 306 and, in case of any violation thereof or of any rule, regulation, requirement or order thereunder, or of failure to comply therewith, the provisions of sections 316 and 317, shall apply to the transportation by a water carrier of com-

modities 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. The transportation, subject to the provisions of this part, of commodities not in bulk, or commodities in bulk at rates lawfully filed and subject to the provisions of section 307, 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. 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. The provisions of this subsection are not intended to alter existing law, as in effect on the day before the date of enactment of this sentence, with respect to water carriers operating solely within a harbor or within the Great Lakes."

~~SEC. 2. The amendment made by the first section of this Act shall expire at the end of the two year period beginning on the date of its enactment. Not less than ninety days before the expiration of such two year period the Interstate Commerce Commission shall report to the Congress on the effects of such amendment on transportation operations under section 303(b) of the Interstate Commerce Act.~~

~~SEC. 3. In carrying out its functions under section 2 of this Act, the Interstate Commerce Commission may require water carriers operating under the exemption contained in section 303(b) of the Interstate Commerce Act to file such reports containing such information as the Commission may prescribe.~~

Passed the House of Representatives August 12, 1970.

Attest: W. PAT JENNINGS,

Clerk.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 11, 1970.

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

DEAR MR. CHAIRMAN: We have your letter of August 18, 1970, in which you asked for our comments on H.R. 8298, which passed the House of Representatives August 12, 1970.

H.R. 8298 proposes to amend section 303(b) of the Interstate Commerce Act, 49 U.S.C. 903(b), concerning the transportation by water of certain bulk commodities. At present, section 303(b) exempts from regulation by the Interstate Commerce Commission the transportation by a water carrier of certain commodities in bulk when no more than three such commodities are carried in one vessel. Eligible commodities are those which were handled in bulk according to the custom of the trade as of June 1, 1939, and two or more vessels navigated as a unit are defined as a single vessel.

A flotilla of barges, regardless of the number, when operated as a single tow is a single vessel within the meaning of section 303(b), and no more than three bulk commodities may be carried under the exemption. The Interstate Commerce Commission construed the provisions of section 303(b) to make the bulk commodity exemption inapplicable if bulk commodities and non-bulk commodities are transported in the same vessel (i.e., in the same tow). That construction has been sustained by the Supreme Court. *Gulf-Canal Lines, Inc.* v. *United States*, 386 U.S. 348 (1967), affirming judgment in 258 F. Supp. 864; *Commercial Barge Lines* v. *United States*, 359 U.S. 342 (1959), affirming judgment in 166 F. Supp. 867.

H.R. 8298 would require that water carriers publish and file with the Commission in accordance with section 306, 49 U.S.C. 906, the rates applicable to exempt

bulk commodities. This would not subject such transportation to regulation; it is intended to bring some degree of stability to the pricing of this transportation. The bill would also change the mixing rule to permit non-bulk commodities or non-exempt bulk commodities, or both, to be transported in the same vessel with exempt bulk commodities. In order to permit harbor and Great Lakes water carriers to remain in their present status, H.R. 8298 would continue existing law as to them.

Section 2 of H.R. 8298 provides for expiration of the amendments in section 1 at the end of two years from the date of enactment. Ninety days before the expiration, the Interstate Commerce Commission would be required to report to the Congress as to the effect of the amendment on the transportation of exempt bulk commodities; section 3 would permit the Commission to require water carriers of exempt commodities to make reports of information needed in preparing its report to the Congress.

H.R. 8298 would not broaden the exemption granted in section 303(b); it retains the stipulation that a commodity must have been customarily transported in bulk on June 1, 1939, to qualify for the exemption. But it would require publication and filing of the rates and, substantively, it would permit intermingling in the same tow barges carrying regulated commodities and barges carrying non-regulated ones, without the latter losing the benefit of the exemption.

The matter of granting exemptions from regulation, and the conditions attached to the grant, are fundamentally a matter of Congressional policy. We note that on September 29, 1967, your Committee reported favorably on S. 1314 (Committee Report No. 576), 90th Congress, 1st Session, which would have removed both the 1939 restriction on the definition of bulk commodities and the provision that two or more vessels navigated as a unit are to be considered as one vessel. By unanimous consent of the Senate on June 4, 1968, however, S. 1314 was postponed indefinitely and ordered to lie on the table. 114 Cong. Record 15921. The changes proposed in H.R. 8298 in the conditions which make the exemption operative would be in the nature of an experiment; at the end of two years from enactment the Congress would have the opportunity to reconsider them in the light of actual experience.

In the circumstances, we do not think H.R. 8298, if enacted, would substantially affect our functions and we have no objection to its favorable consideration by your Committee.

Sincerely yours,

R. F. KELLER,
Assistant Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 18, 1970.

Hon. VANCE HARTKE,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR SENATOR HARTKE: Thank you for your letter of September 11, 1970, inviting me to testify on behalf of the Commission on H.R. 8298, 91st Cong., 1st Sess., as recently approved by the House of Representatives. I understand that you have sought to keep the hearings as brief as possible, and accordingly, rather than testify in person, I thought I would take this opportunity to convey to you the views of the Interstate Commerce Commission on this legislation.

Domestic water transportation is subject to economic regulation substantially similar to that which applies to railroads and motor carriers. However, when the Congress thirty years ago enacted Part III of the Interstate Commerce Act, it provided for a number of exemptions so that the effectiveness of the regulatory scheme in the interim has been largely negated. While precise data are not available, it has been estimated that as much as ninety percent of the traffic upon the waterways of this country moves under one exemption or another.

Foremost among the exemptions is that afforded by section 303(b) of the Interstate Commerce Act, 49 U.S.C. § 903(b)—the so-called bulk commodities exemption. Essentially it provides that none of the regulatory requirements apply to the transportation of commodities in bulk so long as not more than three such commodities are transported in a vessel, including a tow of barges. The Interstate Commerce Commission always has construed the exemption as obtaining only as long as the vessel, including a tow of barges, contained no non-bulk

commodities when being used to transport the bulk commodities. The Commission's so-called no-mixing rule has been sustained by the reviewing courts, most recently in *Gulf Canal Lines, Inc.* v. *United States*, 258 F. Supp. 864 (S.D. Tex. 1966), aff'd mem., 386 U.S. 348(1967), upholding the Commission's decision in No. W–C–5, *Mississippi Valley Barge Co., Exemption, Section 303(b)*, 311 I.C.C. 103(1960). The effective date of the Commission's ruling in that proceeding has been postponed from time to time upon the request of the Chairmen of the Senate and House Commerce Committees to permit Congressional consideration of legislative amendments and is now established to be September 28, 1970.

The subject bill, in effect, would abrogate the so-called no-mixing rule and permit the concurrent transportation in a vessel, including tows of barges, of commodities not in bulk and commodities in bulk moving under the exemption of section 303(b) of the Act, subject, however, to the requirement that there be disclosure of the charges for the transportation of the bulk commodities, as provided by the provisions of section 316 of the Act.

While we continue to believe that the best solution is the total repeal of section 303(b) of the Act, the subject bill represents a move in the right direction. At present bulk commodities, such as coal, grain, chemicals and the like, are transported wholly free of regulatory requirements by certain water carriers, under published rates and the other obligations imposed by the Act, and by other water carriers, at least some of the time. Railroads, of course, are subject to complete economic regulation. Such inconsistency in the burdens imposed upon transportation not only places the railroads at a serious competitive disadvantage in their efforts to solicit traffic within the reach of the waterways, but it is completely disruptive of stability in transportation upon the Nation's rivers and lakes. Obviously, traffic is not likely to move by water carriers which now publish rates and are subject to other regulatory requirements so long as other water carriers are free to handle the identical traffic at negotiated rates and free of any other statutory obligations. In the Commission's view, the matter is best resolved by repealing the bulk commodities exemption of section 303(b) of the Act altogether and subjecting all the affected traffic uniformly to the economic regulations administered by the Commission under the Interstate Commerce Act. The Commission has 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. See, for example, the 76th Annual Report of the Interstate Comerce Commission 208 (1962). Continuance of the present exemption, even as modified by the subject bill, is neither conducive to fair and effective regulation nor to achieving the goals of the National Transportation Policy.

Nevertheless, the subject bill would affect the amendment of the exemption of section 303(b) of the Act in a desirable direction. We favor the requirement that, if the transportation of bulk commodities is to be permitted free of any other regulatory restraints, at the very minimum there be full disclosure of the rates and charges upon which such exempt transportation is performed. This, as we understand it, the subject bill would accomplish by requiring all water carriers, whether otherwise subject to the requirements of the Act, to publish rates and charges for the transportation of exempt bulk commodities in tariffs which meet the requirements of section 306 of the Act. Furthermore, we find merit in fostering the maximum utilization of the equipment plying the waterways and in not impeding the efficiency and economy of water carrier operations by precluding the mixing of bulk and non-bulk commodities in a single vessel, including tows of barges, under the differing regulatory requirements that presently apply. Finally, we agree that it is desirable, that the Commission be afforded the opportunity to study the effects of the amendment and to report to the Congress at the conclusion of the two-year trial period contemplated by the legislation as to its effect and the need, if any, for further revision of the statute. Thus, although the Commission has consistently favored repeal of section 303(b) of the Act, enactment of the proposed legislation, at this juncture, is acceptable to the Commission.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., September 29, 1970.

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

DEAR MR. CHAIRMAN: This responds to your request for our comments on H.R. 8298, an act passed by the House of Representatives on August 12, 1970, "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 Department recommends passage of the bill as originally introduced in the House.

The original bill would have deleted the "custom of the trade" definition of bulk commodities. This is necessary if we are to recognize the technological advances that have taken place in shipping practices and barge line transportation since this section was enacted in the Transportation Act of 1940. Should this archaic definition be continued, as is contemplated by the present bill, the future development of bulk shipping economies will be denied to agriculture commodities.

The original bill would also have deleted the definition of what constitutes a vessel. This would have set aside the "no mixing" interpretation of the statute by the Interstate Commerce Commission in *Mississippi Valley Barge Line Company Exemption, 303(b)*, 311 ICC 102; Order Enforced and Petition Dismissed sub nom. *Gulf Canal Lines, Inc. v. United States of America and Interstate Commerce Commission*, 258 F. Supp. 864 (S.D. Tex. 1966) *aff'd* 35 U.S.L.W. 3328 (U.S. Mar. 20, 1967). The "no mixing" interpretation holds that the exemption is lost if the tow contains more than three bulk commodities or if the tow contains any nonbulk commodities. While the present bill will give the regulated carrier the right to mix nonbulk commodities with bulk commodities, it will not give the small unregulated carrier the right to carry more than three bulk commodities. It is quite possible that the efficient use of transportation equipment, through the assembly of large tows without regard to commodity mix, could lead to reduced transportation costs.

Finally, to subject the unregulated water carrier to the provisions of section 306 of the Interstate Commerce Act, as proposed in the amended version, would not be in the best interest of agriculture. This section would require tariff publications designating routes, origins and destinations, rates, rules and charges. Also, once the unregulated carrier has published his minimum rates, he would be required to maintain them for at least 30 days. The added revenue needed to comply with these requirements would most likely appear in the form of increases in transportation charges or curtailments of service to the agricultural shipper. Further, the unregulated carriers could not sit down collectively to set rates as do the regulated carriers without subjecting themselves to the antitrust laws. Thus, in reality, the unregulated carrier would become subject to regulation without obtaining any of the advantages of the regulated carrier.

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

Sincerely,

J. PHIL CAMPBELL, *Under Secretary.*

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 30, 1970.

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

DEAR MR. CHAIRMAN: This letter offers the views of this Department on H.R. 8298, which has been reported favorably by the House Interstate and Foreign Commerce Committee on September 25, 1969, and passed by the House on August 12, 1970, and which is now pending before your Committee.

As originally introduced, H.R. 8298 would have changed the scope of the exemption from economic regulation afforded by section 303(b) of the Interstate Commerce Act in the following ways:

1. It would have eliminated the obsolete and obscure definition of bulk commodities as being those carried in the "custom of the trade" as of June 1, 1939.

2. It would have expanded the scope of the exemption afforded by the present law which limits the scope of the exemption to not more than three bulk commodities in a "single vessel," a vessel being defined as an entire tow of barges. By eliminating this definition, H.R. 8298 would have permitted the application of the exemption to each barge. In addition to expanding the scope of the exemption generally, this change would have, in effect, overcome the Commission's "mixing rule" decision at the same time.

DOT supported this bill in its comments to the House Interstate and Foreign Commerce Committee. That Committee, however, reported out an amended bill on September 25, 1969, which was passed by the House on August 12, 1970, which would:

1. Require all water carriers (certified or not) hauling bulk commodities to publish tariffs on 30 days notice and abide by them, subject to the usual penalties in the Interstate Commerce Act;

2. Provide that as to unregulated bulk commodities mixed in the same barge with regulated commodities, the exemption from economic regulation under the Interstate Commerce Act as to the regulated commodities would continue, modified only as to the tariff publishing requirements in (1) above;

3. Provide that this legislation shall be in effect for two years from the date of enactment and that 18 months from the date of enactment the ICC will file a report to Congress on the effects of the amendment on transportation operations under section 303(b). The Commission would also be empowered to require reports from water carriers operating under the exemption in (2) above containing such information as the Commission may prescribe. Existing section 303(b) would not be altered as to water carriers operating solely within a harbor or within the Great Lakes.

As your Committee is aware, the Department would have preferred the enactment of H.R. 8298 as originally introduced since it would have both modernized and liberalized what, in our view, are obsolete and unduly restrictive regulatory requirements that are of doubtful value in present-day competitive transportation conditions. Nevertheless, it is our view that the so-called "mixing rule" dispute which has perplexed the Commission, the courts, the Congress for over a decade requires resolution. This resolution is provided, at least temporarily, by the bill now before your Committee. If favorable consideration is to be given this legislation, however, we would urge that the following amendments be added:

First, we believe that the bill's provisions should be effective for three years, rather than two as proposed in the bill, and that the Department, rather than the Interstate Commerce Commission, should conduct the study called for by section 2 of the bill. In our view, the additional year's application is essential for the gathering and assessment of the information required to evaluate the effects of this legislation. Moreover, the issues presented in this legislation involve basic matters of national transportation policy, rather than solely questions of the proper scope of economic regulation by the Commission. For this reason, we believe the Department is the more appropriate agency to conduct the study. We, of course, will invite the support and cooperation of the Commission in this effort.

Second, we believe the bill should be amended so as to eliminate the so-called "custom of the trade" provision. There is no reasonable explanation for the retention of this obsolete and confusing provision of the present law. In lieu of eliminating this provision entirely, we would have no objection to changing the operative date of this provision from June 1, 1939 to January 1, 1970, thus reflecting the economic and technological changes which have occurred over the last 30 years.

Aside from these two amendments, we believe that clarification, either through specific amendments or appropriate legislative history, is required on the following: 1) the extent to which it is legally permissible for water carriers required to file tariffs under section 1 of the bill to designate a common agent for the publication and filings of such tariffs; 2) clarification of what constitutes, under section of the bill, a water carrier "operating solely within a harbor" and 3) clarification that this bill is not intended nor is to have the effect of subjecting

the heretofore exempt water carriers encompassed by it to a definition making them "regulated carriers" or a mode of transportation subject to the Interstate Commerce Act. This would be in accord with the Supreme Court's decision in the Ingot Molds Case (American Lines v. L.&N.R. Co. 392 U.S. 571, 593 (1969)) insofar as it denied the protection of section 15a(3) of the ICC Act to non-regulated carriers. All of the above points are set forth in greater detail in the Department's letter of February 20, 1970, to Chairman Colmer of the House Committee on Rules, a copy of which is enclosed.

In our view, inclusion of all or substantially all of the foregoing amendments and clarifications render H.R. 8298 in its amended form reasonably acceptable. Subject to these comments, we would not object to the enactment of H.R. 8298 since, as noted, it does provide a temporary basis for solving a vexing problem.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this report for the consideration of the Committee.

Sincerely,

JAMES A. WASHINGTON.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 20, 1970.

Chairman WILLIAM M. COLMER,
House Committee on Rules,
The Capitol, Washington, D.C.

DEAR MR. CHAIRMAN: This letter offers the latest views of this Department on H.R. 8298, now pending before your Committee.

As originally introduced, H.R. 8298 would have changed the scope of the exemption from economic regulation afforded by section 303(b) of the Interstate Commerce Act in the following ways:

1. It would have eliminated the obsolete and obscure definition of bulk commodities as being those carried in the "custom of the trade" as of June 1, 1939.

2. It would have expanded the scope of the exemption afforded by the present law which limits the scope of the exemption to not more than three bulk commodities in a "single vessel," a vessel being defined as an entire tow of barges. By eliminating this definition, H.R. 8298 would have permitted the application of the exemption to each barge. In addition to expanding the scope of the exemption generally, this change would have, in effect, overcome the Commission's "mixing rule" decision at the same time.

DOT supported this bill in its comments to the House Interstate and Foreign Commerce Committee. That Committee, however, reported out an amended bill on September 25, 1969, which would:

1. Require all water carriers (certificated or not) hauling bulk commodities to publish tariffs on 30 days notice and abide by them, subject to the usual penalties in the Interstate Commerce Act;

2. Provide that as to unregulated bulk commodities mixed in the same barge with regulated commodities, the exemption from economic regulation under the Interstate Commerce Act as to the unregulated commodities would continue, modified only as to the tariff publishing requirements in (1) above;

3. Provide that this legislation shall be in effect for two years from the date of enactment and that 18 months from the date of enactment the ICC will file a report to Congress on the effects of the amendment on transportation operations under section 303(b). The Commission would also be empowered to require reports from water carriers operating under the exemption in (2) above containing such information as the Commission may prescribe. Existing section 303(b) would not be altered as to water carriers operating solely within a harbor or within the Great Lakes.

When the reported bill came to your Committee, the granting of a rule was opposed on two occasions by the Department of Transportation and by others. In addition to favoring the original bill on its merits, we were of the view that a more comprehensive and balanced approach should be developed. To this end, we undertook the preparation of both a proposed amendment to the rule of intermodel ratemaking in the Interstate Commerce Act, section 15a(3) and a possible compromise version of H.R. 8298. These amendments were to be viewed as a package. However, as matters developed, no strong support was elicited for this approach from any quarter. In the circumstances, the question was presented as

to what should now be the appropriate posture of this Department. We recognize that both Commerce Committee chairmen in the Congress have shown their support for a legislative resolution of this matter by requesting the ICC to withhold until July 1, 1970, the taking effect of its W–C–5 decision which barred the mixing of regulated and unregulated commodities in the same tow.

While we would prefer the passage of H.R. 8298 as originally proposed were an open rule now to be granted DOT would urge that the following amendments and clarifications be supported:

A. DOT would be substituted for the ICC as the agency to conduct the study with the right to require reports, and the law would be effective for three years with the study due in 30 months. We are of the view that this Department is more disinterested and more appropriate an agency than the ICC to conduct the study. A 30-month study rather than one of 18 months is deemed necessary because of the time frame and the amount of information required on which to base any reasonable evaluation of the effect of the law

B. Elimination of the June 1, 1939 "custom of the trade" provision. There is no reasonable explanation for a retention of this feature of present law. This 30-year old anachronism fails to recognize economic and technological changes which have occurred over the years. Alternatively, we would be agreeable to a change in the "custom of the trade" date to January 1, 1970.

C. The provisions of section 5a of the Interstate Commerce Act should be made specifically applicable to protect the many small carriers who will have to file tariffs. Presently, section 5a protection is available to the railroads, the regulated trucks, and the regulated barge lines. Since the water carriers who would be required to file tariffs would, through the very act of tariff filing on 30-days notice, open themselves to section 5a-protected competition, fairness would seem to require that they be accorded similar treatment. Alternatively, we would be agreeable to a clarification in the floor debate to the effect that enactment of H.R. 8298 in its amended form would not preclude water carriers required to file tariffs under its provisions from designating a common agent to arrange for the publication and filings of such tariffs.

D. Clarification as to what constitutes a water carrier operating solely within a harbor. There is presently a significant number of carriers operating in and also around harbor areas. It would probably be more appropriate and clear to utilize statutory language similar to that contained in section 303 (g) (1) of the Interstate Commerce Act to define the coverage contemplated by the statute.

E. Clarification that this bill is not intended nor is it to have the effect of subjecting the water carriers encompassed by it to a definition making them "regulated carriers" or modes of transportation subject to the Interstate Commerce Act. This would be consistent with the temporary and limited nature of the bill and would be in accord with the Supreme Court's *Ingot Molds* decision (*American Lines* v. *L. & N.R. Co.*, 392 U.S. 571, 593 (1969)) insofar as it denied section 15a(3) ratemaking protection to nonregulated carriers.

In sum, we are of the view that all or substantially all of the foregoing amendments and clarifications will render H.R. 8298, as amended, reasonably acceptable. In addition, it will permit the Congress to resolve, at least temprarily, a dispute raging before the Commission, the courts, and the Congress for many years.

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

Sincerely,

JAMES A. WASHINGTON, Jr.,
General Counsel.

NATIONAL GRANGE,
Washington, D.C., June 2, 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: 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 to 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 therefor 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 W. SCOTT,
Master, The National Grange.

NATIONAL GRANGE,
Washington, D.C., September 8, 1970.

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

DEAR MR. CHAIRMAN: The National Grange is disturbed over the passage by the House of Representatives on August 12 of H.R. 8298, as amended. The bill would amend Section 303(b) of the Interstate Commerce Act to permit barge operators to transport exempt (unregulated) dry bulk commodities in the same tow or barge flotilla with non-exempt commodities without losing the exemption but, unlike the original bill, would restrict the amendment to a period of two years, require the filing with the Interstate Commerce Commission of rates for the "exempt" commodities (minimum rates in the case of contract carriers), and also require water carriers operating under the exemption to file "such reports containing such information as the Commission may prescribe" for the purpose of a report by the Commission to Congress (not less than ninety days before the end of the two-year period) on the effects of the amendment. The amended bill also differs in other respects from the bill considered in public hearings.

The Grange supported passage of H.R. 8298 in its original form and also supported a similar bill approved by your committee after hearings, S. 1314, in the preceding session of Congress. As a possible aid in understanding the ends sought to be achieved by these bills, the position of the Grange, and our reasons therefor, there is attached a copy of the letter we sent on June 2, 1969, for inclusion in the record of the House hearings.

While we think the approach of the original H.R. 8298 to the "mixing rule" problem and the entire bulk commodity exemption was the proper one, affording a simple and effective solution, our chief objection to the amended bill is the fact that it would require presently unregulated carriers to file rates and Commission-prescribed reports. In essence, in our judgment, these carriers would become a type of regulated carrier. Among other things, no new rate or change could be established execept after thirty days notice of the change had been filed with the Commission. Also, we think that there is a definite possibility that contract carriers would in fact be subject to economic regulation of rates by the Commission, although that was apparently not the intention of the House of Representatives. Under Section 306(e) of the Interstate Commerce Act they would be required "to establish and observe *reasonable* minimum rates and charges . . ." In the judgment of some, this "reasonable" requirement would give the Commission the authority, and even the duty, to investigate rates and to require that they be set at what the Commission determined was a reasonable level.

We may not be aware of all of the problems the filing of rates and reports would cause for some 900 presently unregulated carriers. No hearings were held on the amended bill; the crucial amendments were made after Committee hearings were ended. However, it is apparent that many additional demands would be made on the carriers, who generally would have had no previous experience with the complications of rate filing, the problems of Commission reports and necessary record-keeping, and the vagaries of Commission thinking. Many of these

carriers are small operators and some do not even have regular office personnel. It is not unlikely that the increased complexity of doing business would drive at least some meaningful percentage out of barging operations. In any case, H.R. 8298, as amended, would add not inconsiderable amounts to the operating expenses of presently unregulated carriers and necessarily result in an increase in the charges they would have to require of shippers.

In our judgment there would be no compensating advantages to shippers or the public. The net result of the House bill would be to place unregulated barge operations in a Commission halter in order to provide statutory authority for a small group of common carrier barge lines to transport their regulated common carrier commodities (such as iron and steel) at the same time they transport dry bulk commodities (such as grain, fertilizers and coal). While we approve of the easing of restrictions on "mixing", we can not approve of the costs to the unregulated carriers and the public which are inherent in the House bill.

The probable results of H.R. 8298, as amended, should not be imposed on the nation, certainly not without consideration that has not yet been afforded. The Senate should hold hearings on the House bill and not risk possible approval on inadequate investigation.

While the Grange has for years expressed the view that the provisions of the original H.R. 8298, or of S. 1314, were the best answers to the problem under consideration, we shall interpose no objection to any legislation that is limited to permitting the carriage of "exempt" and "regulated" commodities in the same tow.

It would be appreciated if this letter were made a part of the record of any hearings that may be held.

Sincerely,

JOHN W. SCOTT, *Master.*

AFL–CIO MARITIME COMMITTEE,
Washington, D.C., September 23, 1970.

Hon. VANCE HARTKE,
Chairman, Subcommittee on Surface Transportation,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR HARTKE: We would like to have inserted into the record this letter in which we respectfully urge your Committee to vote out H.R. 8298, the barge mixing rule, very promptly and without amendment.

In the technological improvement which has made the wording of section 303(b) obsolete, we have an example of organized labor working hand-in-hand with management to improve productivity. Contrary to much irresponsible propaganda, trade unions in general and the maritime unions in particular, are willing to work with management in developing more efficient ways of getting the job done. The larger tow boats, and larger tows on the inland rivers are an example of such labor and management cooperation. The result of this improved productivity has been that while pay and conditions of maritime labor on the rivers have improved over the past ten years, average barge rates have actually declined—an achievement of great benefit to consumers and industry served by the river barge lines.

Our members are very much aware that these achievements can be swept away if this bill does not pass. The ICC has an order pending against the barge lines which would have the effect of making them separate regulated and unregulated commodities and operate separate tows at the sacrifice of present efficiencies. I understand that order will become effective next Monday, September 28. The House and Senate Commerce Committees have, since 1967, asked the ICC to stay the effective date of that order until Congress has a chance to act on the modernization of the law.

We think the time has come to end discussion and pass this worthwhile bill. In view of the time limits set by the ICC, we hope that the Senate will adopt the House version of the bill without any change. That will save time by avoiding the necessity for a conference.

There is no controversy on the question of the consumer interest in continued mixing. It appears to be most desirable on the part of some interests to continue secret rate making on dry bulk commodities. The House Committee has recommended that in the future all rates on dry bulk commodities be recorded in an open and above board fashion. We can see nothing wrong with this. Labor had always supported the public's right to know interest rates and the public's right

to accurate labeling and packaging. We therefore support the right of the public to know freight rates.

We are impressed by the fact that this bill has a two year cutoff date, so that any difficulties created by it can be changed at a later date. That seems to us to be a fair proposition.

We urge you to adopt this bill promptly and without change.

Sincerely yours,

HOYT S. HADDOCK,
Executive Director.

LAKE CARRIERS' ASSOCIATION,
Cleveland, Ohio, September 18, 1970.

Re H.R. 8298.

Hon. VANCE HARTKE,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR SENATOR HARTKE: We very much appreciate being given the opportunity to testify on September 22 in connection with the above-captioned Bill, but unfortunately a meeting of our Executive Committee is scheduled for that day and, therefore, it will be impossible for me to attend the hearing. We will, however, submit a statement informing you of some of the character features of Great Lakes transportation which makes it unique and distinct from other transportation systems and, therefore, requires separate treatment.

Briefly stated, we are most anxious to retain that provision of the Bill which provides that: "The provisions of this subsection are not intended to alter existing law, as in effect on the day before the date of enactment of this sentence, with respect to water carriers operating solely within a harbor or within the Great Lakes."

The House Committee on Interstate and Foreign Commerce included this provision because it found, as indicated in the Committee report (91st Congress, 1st Sess on No. 91–520, page 11):

"The committee recognizes that the Great Lakes situation is a separate matter, where the competition of foreign carriers may be involved, and where there has not seemingly been much of a problem with the mixing rule as most lake vessels carry only one bulk commodity and at most not over three. No testimony was offered as to the effect upon them of the Commission's mixing rule order. While it would appear that most lake traffic moves under other exemptions, nevertheless, so that there be no change in the status of the lake carriers, a proviso has been added to section 303(b) that it will remain as it now reads insofar as these carriers are concerned."

The problem here sought to be solved is one of the inland rivers where transportation is performed primarily by means of tugs and barges. Consequently, we see no reason to disturb existing law on the Great Lakes.

Very truly yours,

SCOTT H. ELDER,
General Counsel.

STATEMENT OF LAKE CARRIERS' ASSOCIATION, CLEVELAND, OHIO

Lake Carriers' Association is an organization comprised of 18 vessel companies owning and/or operating a total of 196 bulk cargo vessels, which vessels represent virtually the entire American flag Great Lakes merchant fleet engaged in the transportation of bulk commodities. Last year the total bulk commodity movement on the Great Lakes by American flag vessels was 156.3 million net tons, consisting primarily of the commodities iron ore, coal, stone, grain, sand, salt, cement and petroleum. The total bulk commodity commerce of the lakes, including that moved by Canadian vessels, was 226 million net tons. Tonnagewise, this is more than 95% of the total commerce of the lakes.

THE MIXING RULE PROBLEM DOES NOT RELATE TO THE LAKES

The mixing rule problem is peculiar to the inland rivers and arises out of the fact that technical innovations of recent years have produced more powerful towboats, permitting the accumulation of large tows of as many as 40 or more barges. The technology of the Great Lakes is distinctly different. The Great Lakes bulk cargo vessel is unique in construction and design. The place-

ment of pilothouse and deck crew quarters forward and the placement of engine rooms, galley and engine crew quarters aft permits virtually the entire reach of the vessel to be dedicated to the receipt and discharge of cargo. This in turn has brought about the development of highly sophisticated dock machinery for loading and unloading, supplemented by an equally sophisticated development of vessel self-unloading devices for bulk cargo. The end result is the utmost efficiency and dispatch in the loading and unloading of vessels, thus minimizing turn-around time between cargoes. As a corollary, Great Lakes vessels seldom transport more than one bulk commodity at a time and rarely, if ever, more than three. Neither do they co-mingle bulk and non-bulk commodities in the same vessel for purposes of transportation. Indeed, the two types of commodities are rarely transported by the same vessel owner. With very few exceptions those vessel owners who engage in bulk transportation are exclusively in that trade. It is clear that the type of service offered by Great Lakes vessels is readily distinguishable from the type of service rendered by barges on the rivers.

NO INTENT TO ALTER EXISTING LAW ON THE LAKES

Presumably the original sponsor of the mixing rule bill did not intend in any way to alter the present exempt status of bulk commodity transportation on the Great Lakes because no amendment of Subsection 303(c) of the Interstate Commerce Act was proposed. This subsection exempts from regulation transportation by a *contract carrier* by water of commodities in bulk in a nonoceangoing vessel on a normal voyage during which the cargo space of a vessel is used for the carrying of not more than three such commodities and the vessel passes within or through waters which are made international for purposes of any treaty to which the United States is a party. This is the so-called Great Lakes exemption because the Boundary Waters Treaty of 1909 declares the Great Lakes, including Lake Michigan, to be international waters for navigation purposes.

When originally enacted it was thought that the term "contract carrier by water" was sufficiently broad to exclude from regulation for hire carriers on the Great Lakes since traditionally and under maritime law Great Lakes vessel companies were thought to be contract carriers while transporting bulk commodities for hire. Two Great Lakes cases hold to this effect, *The Pawnee*, (ED, Mich.) 205 F.333, and *The H. A. Rock*, (WD, N.Y.) 23 F.2d 198.

Subsection 302(d) of the Interstate Commerce Act defines a "common carrier by water" as any person which holds itself out to the general public to engage in the transportation by water, in interstate or foreign commerce, of passengers or property, or any class or classes thereof, for compensation. In construing this definition the Commission, in a series of motor carrier cases, has consistently sought to graft upon the common law concept of contract carrier the further requirement of specialization. The effect of the specialization test, thus conceived, has led the Commission to conclude that where a carrier serves a number of shippers, specialization is necessarily absent, even though the transportation may be performed only under special arrangements for specific cargoes and on any given occasion the capacity of the vessel is made available only to one person or to one set of persons. This philosophy is evidenced by the fact that in *Columbia Transportation Co., Contract Carrier Application*, 260 ICC 135, the Commission refused to follow the maritime law and found that Columbia Transportation Company, a Great Lakes vessel operator, was a common carrier.

Accordingly our apprehension is that were it not for Subsection 303(b) the Commission would quickly take the Great Lakes vessel operator out of his natural role as a contract carrier and classify him as a common carrier subject to regulation. Consequently the general bulk commodity exemption is of extreme importance to the Great Lakes.

THE ORIGINAL INTENT OF H.R. 8298

As originally introduced, H.R. 8298 did not affect the Great Lakes because it would have (1) removed the prohibition against the transportation of regulated commodities in the same tow of vessels with exempt bulk commodities; (2) removed the limitation which prohibits the carriage of more than three bulk commodities in a single tow, and (3) removed the custom of the trade date of June 1, 1939, which limits those dry bulk commodities which may be carried exempt from regulations. As reported out by the Subcommittee on Transportation and Aeronautics, however, the bill would have required all water carriers transport-

ing bulk commodities under Subsection 303(b) to publish tariffs showing all rates, fares, charges, clarifications, rules, regulations and practices for the transportation, in interstate or foreign commerce, of property for hire, whether or not they co-mingled regulated and unregulated commodities.

The House Committee on Interstate and Foreign Commerce readily recognized that by thus broadening the bill, the Great Lakes were directly affected. Thus the Committee, before reporting the Bill to the House, added on amendment providing that "the provisions of this subsection are not intended to alter existing law, as in effect on the day before the date of enactment of this sentence, with respect to water carriers operating solely within a harbor or within the Great Lakes."

In its report (91st Cong., 1st Sess., Report No. 91–520, Page 11) the Committee said: "The committee recognizes that the Great Lakes situation is a separate matter, where the competition of foreign carriers may be involved, and where there has not seemingly been much of a problem with the mixing rule as most lake vessels carry only one bulk commodity and at most not over three. No testimony was offered as to the effect upon them of the Commission's mixing rule order. While it would appear that most lake traffic moves under other exemptions, nevertheless, so that there be no change in the status of the lake carriers, a proviso has been added to section 303(b) that it will remain as it now reads insofar as these carriers are concerned."

NO ONE ADVOCATES EXTENDING H.R. 8298 TO THE LAKES

Proponents of the bill, as passed by the House, recognize that this is not our fight. The Water Transport Association, representing certificated common carrier barge lines, has not urged deletion of the Great Lakes provision quoted above, urges adoption of H.R. 8298 without amendment. The Association of American Railroads also supports without amendment H.R. 8298 as passed by the House. Thus it is evident that there is no opposition to retaining that provision of the bill which specifies that the bill is not intended to alter existing law with respect to water carriers operating solely within the Great Lakes.

WHY THE GREAT LAKES SHOULD BE EXCLUDED

There is good reason for excluding the Great Lakes from the provision of this bill. As has been noted so often by the Congress, the commerce of the Great Lakes is predominantly the transportation in bulk of such raw materials as iron ore, limestone, coal and grain. In dealing with the transportation of commodities in bulk on the Great Lakes, it has been the traditional policy of the Congress to exempt such transportation from economic regulation. That is a sound policy redounding to the public interest and should be continued.

Three Acts of Congress have dealt in some form with economic regulation of water carriers. They are, the Shipping Act, 1916, the Intercoastal Shipping Act, 1933 and The Transportation Act, 1940. In each of those Acts the Congress excluded from the regulatory provisions the transportation of commodities in bulk on the Great Lakes. In making such exclusions the Congress, in effect, based its action on findings as follows:

(1) That the transportation of commodities in bulk on the Great Lakes is conducted by contract and private carriers, not common carriers;

(2) That such transportation is not competitive with common carriers either by land or water; and

(3) That such transportation is competitive with foreign carriers.

Preliminary to enactment of the Transportation Act, 1940, the late Joseph B. Eastman, then a member of the Interstate Commerce Commission, acting in capacity of Federal Coordinator of Transportation, drew a sharp distinction between Great Lakes carriers and private and contract carriers elsewhere. Said he,

"There are, however, private and contract operations which are not open to these objections. An outstanding example is the operation of the cargo boats on the Great Lakes which carry, chiefly, iron ore, coal, and grain. So long as they confine themselves to such forms of traffic, they apparently are, as a practical matter, not competitive either with railroads or with common-carrier steamship lines. * * *" (74th Congress, First Session, House Document No. 89, page 17).

Earlier Mr. Eastman had observed,

"The rates which these carriers may obtain are strongly affected by competition among themselves, and with Canadian steamer. The latter competition is

particularly severe in respect of grain and is also forceful so far as concerns stone, ore and cement. The Canadian ships have lower operating costs, owing to smaller crews, lower wages, and fewer restrictions. Their endeavor to secure grain tonnage from Lake Superior ports is aided by the Canadian railroads which maintain low rates via Montreal. Lower rates via Montreal on other commodities, also attract to Canadian shipping a large volume of American export and import traffic." (73rd Congress, Second Session, Senate Document No. 152, pages 134, 135).

That statement was made in 1934. Today foreign flag competition is an even greater problem for the Great Lakes operator than when the Transportation Act of 1940 was adopted. For bulk freight vessels the international trade between the United States and Canada includes all of the major commodities—iron ore, coal, grain and limestone. With the opening of major iron ore deposits in eastern Canada, an additional competition between Lake Superior and Labrador iron ore for ascendancy in the United States market. Since opening of the St. Lawrence Seaway, Labrador ore has moved to midwest docks in consuming areas in cargoes equaling or exceeding the largest individual shipments via the Great Lakes from Mesabi and other Lake Superior ranges. Substantially all of the Labrador product has been transported in Canadian or other foreign registry vessels, due to their cost advantages.

With iron ore normally representing approximately 48% of Great Lakes commerce, coal 29%, limestone 16% and grain 7%, it is clearly apparent that a major change in the source of iron ore is attended by disproportionate repercussions in the Great Lakes bulk cargo trades. Additionally, the availability of a direct water export route from Great Lakes ports to European consuming areas has drastically decreased the availability of grain as east-bound cargo for Great Lakes ships.

Thus, it is not the direct foreign flag competition which is so devastating to our merchant marine but the indirect competition among commodities which must necessarily be shipped by water. It is this type of competition which is rapidly strangling our American flag Great Lakes fleet. To repeal the bulk commodity exemption and place American flag Great Lakes bulk carriers under regulation would but further jeopardize their ability to compete with foreign flag vessels without benefiting any other segment of our domestic transportation system.

Senator HOLLINGS. Gentlemen, I hope you will cooperate. I hate to cut witnesses off at 10 minutes' time. But, as I have indicated, the previous hearing in 1967 covered this very thoroughly. I don't believe the facts have changed. If they have, I want the witnesses to point it out.

I wish they would address their comments to the House-passed measure and the differences between it and the Senate approved one and then submit their written statements for the record.

As the first witness we have the Honorable Ancher Nelsen, U.S. Congressman from the State of Minnesota.

Congressman Nelsen, we appreciate very much—you're busier than we are—your coming all the way over, and we will be glad to hear from you at this time.

STATEMENT OF HON. ANCHER NELSEN, U.S. REPRESENTATIVE FROM MINNESOTA

Congressman NELSEN. Thank you.

I have a prepared statement. I will try to cut it short by summarizing.

First, I want to point out that I appear here as a farmer producer from the Midwest, and in the area that I represent we move a great deal of our commodities by barge on the Minnesota River to the Mississippi River and on to population centers.

I would like to point out that on a Nationwide basis the water carriers move about 15 percent of our intercity freight commodities

and that in my district at Savage, Minn., 3 million tons move out of the terminal at Savage.

I want to point out that we have some real problems as far as moving our farm commodities is concerned. Every year we have problems. We cannot move adequate amounts of our grain out, and we have about 2.5 million bushels of corn to move.

I have been in Bricelyn, I have been in Frost, I have been in Elmore in my district, and I have seen shell corn piled in the streets as tall as the elevator because they could not get boxcars, because they could not get facilities to move it out.

So it is moved to Savage and loaded on barges. It goes to population centers. This is almost entirely by unregulated carriers.

So of the 3 million tons that goes out of barge terminals of my district, 2.5 million is in farm commodities, grain that has to be moved from the farms.

We have basically two kinds of water carriers, regulated carriers, and the unregulated carriers. There are 1,700 of these companies in the United States. Only about 8 percent are regulated. Sixty-eight percent move bulk commodities such as gravel, corn, and grain. They are limited in what they may carry.

Twenty-four percent of the water carriers own their own barges and move their own commodities.

So we have a very important economic factor in my district as far as available transportation facilities to move our products to market.

I want to tell you that it is a pretty serious thing when we have corn and sugar beets waiting to be moved and we can't move them. There is a great deal of spoilage if we don't move them.

As has been mentioned, this issue has been before the committee in 1962, in 1963, in 1964, in 1967, and we have never been able to work out an accommodation which resulted from a decision of the Interstate Commerce Commission which says you cannot mix a tow, and if a tow is mixed, it comes under complete regulation.

This ruling, of course, hit the regulated carriers who found an economic advantage in moving a mixed tow. I can understand that it is a disadvantage to them to be unable to mix their tow.

On the other hand, we have the unregulated carriers who are limited to only three commodities, and the unregulated carriers have no right-of-entry protection. They have no certificate of convenience and necessity. They operate in wide-open competition. Anybody can go in the business.

They have no Reed-Bulwinkle protection under this bill or any other law where rate fixing might come under antitrust, and they only haul those three commodities.

It has been found historically that water carriers have served a good purpose up and down the waterways of the country, serving the inland needs of our country in the way of transportation.

So the regulated and the unregulated carriers got together, and they agreed on a bill, and they pledged to one another the support of a bill which would give the regulated carriers the right to mix, would liberalize some of the provisions dealing with the unregulated carriers, and in my judgment maybe they went a little far in asking for too many things in the unregulated area.

But, anyway, they agreed on a bill and pledged their support to the bill that came before our committee.

When the bill came out of our committee, the barges had gone down the wrong river for sure, because what started out as a mixing rule bill, which was the purpose of the proposal, ended up being a regulation bill.

Remember there are only 8 percent of the carriers which are regulated carriers. But the regulated carriers were so anxious to get what they wanted, that when they found out they had the opposition from the railroads—and I can understand that because everybody has to protect his own interest; I don't quarrel with that—they accommodated the opposition and made a deal to go along with putting the unregulated carriers under regulation, all 68 percent of them, in order to get the 8 percent what they wanted.

And I feel this is a complete misdirection of the intent of all the testimony that we had in our committee. It dealt with mixing and not one bit with regulation. And if we want a regulation bill, let's bring in a regulation bill and call it by its right name.

I offered an amendment on the House floor, and nearly won with it. It would have given the regulated carriers the right to mix if they posted a minimum rate, not a firm rate but a minimum rate, a floor, and leave the unregulated carriers with the same amount of latitude they now have, no more, no less. With this amendment barges could have continued operating about as they have under the staying orders requested by Congress and granted by the Interstate Commerce Commission. The amendment had it been adopted would have moved toward a better accommodation of the problem.

Now, then, as far as the regulation is concerned, I sat through the hearings under Oren Harris. The railroads appeared. And, my goodness, they wanted deregulation. All of the major lines, the Southern Railroad, the Northwestern, all of them testified. And, my goodness, regulation was almost un-American; it was uneconomic; it should be abolished. They wanted deregulation.

Well, now we go in the other direction and regulate. The House bill would regulate the unregulated carriers of our country who have been operating so successfully in our best interest as far as the producer is concerned, and as far as the consumer is concerned.

Now, the water carriers came before our committee. Mr. Hershey, who will appear here as a witness, said this: "One of the goals of the barge lines is to make as small a change as possible."

Well, if this is a small change, I would hate to see a big one, because this in my judgment will completely destroy many of the common carriers.

I saw my friend and colleague Tom Abernethy this morning at breakfast. He once made a statement that these changes will destroy some of the common carriers in his district. I asked him this morning if I could repeat what he said, and he said, "You sure may."

So under this bill unregulated carriers against their will must file a rate. They can't change the rate for 30 days. It's a firm rate. In my judgment many of them are not equipped to accommodate such a requirement.

I think it would be a travesty if this bill were to pass.

In my views which were submitted as a dissent in the House report I said this:

> To require the publication of rates by all of these small bargelines can be of no use to anyone except competing modes and even to them more for harassment

than for actual economic advantage. The proponents of this legislation say that the publication of rates is not burdensome, yet the bill, on its face, admits to complete uncertainty of its effect by limiting its life to two years and calling for a report to Congress at that time to see what damage has been inflicted. At the same time, some of these same proponents of the bill claim that the publication of rates is really meaningless because only minimum rates will be filed. Is it the business of Congress to experiment with the fate of hundreds of bargelines by passing legislation with admittedly uncertain repercussions? Is it the business of Congress to pass meaningless legislation?

Now, gentlemen of the committee, I want to sum up by saying that I represent the Midwest, Iowa, Minnesota, North and South Dakota, Wisconsin, which areas move a tremendous amount of agriculture commodities on the unregulated carriers.

I have no quarrel with the desire of the regulated carriers to get some accommodation to mixing, and I hope something can be worked out. And I urge this committee to give consideration to the amendment I offered.

I think it is sensible. I think it is fair. And I think it accommodates the regulated carriers to a much greater degree than their compromise legislation which requires the publication of a rate on all the cargo they carry.

I thank the committee for giving me a chance to appear.

Senator HOLLINGS. We very much appreciate your appearance, Congressman.

Senator Baker, who was hoping to get by, had some prepared questions, so let me ask his questions if you don't mind.

He says as he understands your amendment that the Nelsen amendment would have exempted nonregulated carriers from filing any rates and would have required regulated carriers simply to file minimum rates and charges under section 306(e) of the Interstate Commerce Act.

Is that right?

Congressman NELSEN. The unregulated carriers would not have to file a rate, and the regulated carriers would have to file a minimum rate, a floor, not a complete regulated rate.

Senator HOLLINGS. Well, apparently there is some question as to whether the filing of minimum rates under 306(e) would be particularly meaningful inasmuch as a barge operator could file a very low rate, what is sometimes referred to as a paper rate, and would then be free to charge without publication any rate above that low rate.

Would you comment on that?

Congressman NELSEN. Now, are you talking about the bill you have before you?

Senator HOLLINGS. No, your amendment. The proposal for that minimum rate filing as I understand it.

Congressman NELSEN. The minimum rate would apply only to the regulated carriers in my bill. The unregulated carries would continue as they presently operate.

The reason that I left the minimum rate in there for the regulated carriers is this was their own agreement. This was their own bill that they drafted, and I did not disturb their proposition, because if they agreed to it I thought that was their affair.

I was battling to preserve the unregulated carriers, the 68 percent group that do a service for my district.

Senator HOLLINGS. But what would be the impact of the filing of that minimum rate if, as this question of the Senator indicates, it would only be a paper rate, that they would just file a very low rate and then be free to charge without publication any rate above that so-called paper rate or low rate?

Congressman NELSEN. Well. I would say that it would provide a floor below which you couldn't go, and I think that we have practiced that in farm legislation and in many other areas, where we try to be sure that the bottom just doesn't fall out.

I think this would be at least some protection to the competing modes of transportation.

Senator HOLLINGS. Well, again now, pursuing Senator Baker's concern here, if in fact this section 306(e) requirement would be meaningless in that you would just get a paper rate, some minimum, and then you would charge in practice above that amount, would you object to it being extended—I mean your amendment—extended to nonregulated carriers so that both regulated and nonregulated carriers carrying previously nonregulated dry bulk commodities would be treated equally with respect to the requirement of filing rates for transportation of such commodities?

Congressman NELSEN. My feeling is that the unregulated carriers by and large are not equipped to provide a rate schedule. I do not believe they have the manpower to do that. I see no reason why they should be required to move in that direction.

They have been given nothing in the bill. The regulated carriers are getting what they want, the right to mix. This is what they sought in the first place. This bill will give it to them.

The unregulated carriers should be left alone.

Senator HOLLINGS. Now that the distinguished Senator has arrived, maybe he wants to rephrase and restate those questions. I am trying to make a complete record for all concerned.

You are far more familiar obviously, Congressman, than I am with this particular measure. What was the vote in the House on your amendment?

Congressman NELSEN. I lost by 11 votes. I don't have the count right here.

Senator HOLLINGS. How did the bill pass the House? By what margin?

Congressman NELSEN. My amendment was defeated by 11 votes, and I don't recall. Does anybody here?

Senator HOLLINGS. We will find that out and put it in the record.

At the present state then, you urge that we disapprove this bill in the Senate?

[The Nelsen amendment was defeated by a vote of 182 to 193. H.R. 8298 passed the House of Representatives on August 12, 1970, on a voice vote. The vote on an immediately preceding motion to recommit the bill to committee was 141 for recommital to 230 against.]

Congressman NELSEN. I would urge that.

Senator HOLLINGS. What you really started out with was a problem of mixing?

Congressman NELSEN. Right.

Senator HOLLINGS. And somewhere down the road you got down on this——

Congressman NELSEN. Wrong canal.

Senator HOLLINGS (continuing). Primrose path and started into the battle between regulation and nonregulation, which wasn't the initial problem in the first place? Is that right?

Congressman NELSEN. That's right. I made the statement in committee that really the unregulated carriers are getting nothing out of this bill. The regulated carriers are getting what they want. But why should the unregulated carries, 68 percent, have a burden put on their backs to accommodate the regulated carriers, which are only 8 percent?

And while I'm willing to go along with the regulated carriers on working out an accomodation to their problem, I'm not willing to sacrifice 68 percent of the carriers that serve my district.

Senator HOLLINGS. Elaborate on that "sacrifice." Let's say that the Senate passed a bill and it went over and the President signed it. What would happen to that 68 percent of the nonregulated carriers in your judgment? And what would happen to the ultimate using public?

Congressman NELSEN. I think the consumer would be hurt by it, because we have the unregulated carriers in competition with one another. They bid against one another. Anybody can go in the business. They have no certificate of convenience and necessity. They are not required to go before the Interstate Commerce Commission.

Anyone can go into the business. So the competition is keen. I think if you are going to regulate, as Tom Abernathy told me, some of our unregulated bargelines are going to be forced out of business.

Some unregulated carriers are small. Some are big. Manpowerwise this bill places on them a burden that I think is totally unnecessary.

Senator HOLLINGS. Do you have any questions?

Senator BAKER. Mr. Chairman, I arrived late, and I apologize to the Congressman.

Congressman NELSEN. Thank you, Mr. Baker.

Senator BAKER. In view of that, I have no questions at this time.

Senator HOLLINGS. We very much appreciate your appearance at this time, sir.

(The statement follows:)

STATEMENT BY HON. ANCHER NELSEN, A U.S. REPRESENTATIVE FROM MINNESOTA

Mr. Chairman and Members of the Subcommittee, I am very pleased to have this opportunity to appear before you today to give you some of my observations concerning the barge mixing rule bill, H.R. 8298, which you now have under consideration. This House passed bill was the subject of considerable controversy both in our House Committee on Interstate and Foreign Commerce and during its final consideration on the Floor of the House on August 12th of this year.

There are a few important facts and considerations which must be spelled out and defined at the outset—so we can all be sure of what we are trying to do here today—or should I say: what has been attempted to be done for over a decade.

We are concerned here with the regulation of the barge transportation industry. Accepting the precept that any government regulation of any business should be soundly in the public interest, we must ask how and to what extent should this industry be regulated in the general public interest? The simple answer, of course, is the establishment to the extent possible of regulation which will result in orderly, efficient transportation at the lowest possible cost to the shipping public without doing irresponsible damage to any aspect of the nation's overall transportation industry.

First, however, we must have an understanding of the barge transportation industry, of how it operates and of what it consists. Barge traffic plies the inland waterway system of our country, carrying approximately 15% of all intercity

freight transported in the U.S. Water transportation is important in the movement of commodities which have a relatively low value in relation to weight. These include such items as grain, coal, petroleums, certain chemicals and fertilizers, sand and gravel, etc.

The shipment of these bulk commodities is of great importance to my district as it is to many others. Water carrier shipments of bulk commodities in and out of terminals in my Congressional District in 1969 totaled some 3 million tons. Of this amount, almost 2½ million tons (2,496,625) were grain and the remainder was coal, fertilizer and salt. These figures indicate the importance of economical, efficient transportation to the farmers of Minnesota.

There are some 1700 barge line companies in the U.S., of which only about 8% hold certificates of Public Convenience and Necessity issued by the ICC. About 68% of the total are restricted to transportation of exempt commodities since they are not certificated by the Commission. The remainder, 24%, do not haul for hire and are engaged only in transportation of their own commodities.

The so-called "exempt carriers"—those operating without certificates and restricted to carrying commodities exempted from regulation—are not defined by statute as such but are recognized from the nature of their operations. The so-called common carriers are certificated under provisions of the Transportation Act of 1940 which added Part III to the Interstate Commerce Act.

It is the interpretation of the Transportation Act of 1940 by the ICC which brings us to where we are today. We are concerned with attempts to clarify certain aspects of the "dry bulk exemption" set forth in section 303(b) of the Act. These dry bulk commodities are exempt from regulation when no more than three such commodities are transported in a single vessel, and a vessel is defined as being one or more barges in a single tow.

As early as 1941 the Commission in an administrative ruling held that the "not more than three" terminology in section 303(b) also meant that no regulated commodities could be transported in the same tow with dry bulk exempt commodities. Thus the "mixing rule" had its origin. This mixing rule has been the subject of interpretation and litigation down through the years until the U.S. Supreme Court upheld the ICC in the Gulf Canal Lines case in 1967. This latest ruling of the Commission in its W–C5 order held that the prohibition against mixing extended to the towage of non-bulk commodities by a certified carrier together with an "exempt carrier's" bulk commodities through part of a freight haul and that when this prohibition applies to only part of the haul under contract, the exemption is lost for the entire trip.

The District Court in the Gulf Canal Lines case said:

"We are convinced that the section 303(b) exemption applies only if at no time during the entire through trip for which exemption is claimed bulk and non-bulk commodities are not to be transported in the same tow."

The three judge court concluded:

"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 in 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 the Congress, not the Judiciary, to right the machinery."

These statements of the Court, reinforced by years of technological improvements in barge transportation operations, have brought the industry and the shipping public to the Congress for redress on several occasions, but to no avail. Hearings on the issue were held in 1962, again in 1963–64, in 1967 and finally in the 1st Session of this Congress last year. The bill before us today, H.R. 8298 as amended by the Interstate and Foreign Commerce Committee and passed by the House of Representatives, is certainly no answer. Its effect would be to kill, for a two-year period, the exemption clause in section 303(b) by requiring rate filings by all carriers on carrying of dry bulk commodities.

As originally introduced, H.R. 8298 was supported by the entire barge industry. The Committee Report of the House Committee on Interstate and Foreign Commerce recognizes this fact:

"The water interests who testified presented a united front on the bill as it was introduced, that is the removal of the statutory limitations so that the exemption from regulation of bulk commodities would pertain regardless of the number of such commodities and regardless of the 'mixing' of regulated non-bulk and non-regulated bulk commodities in the same tow."

Mr. J. W. Hershey, speaking for the Water Transport Association—the certificated carriers—emphasized in his testimony:

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

Without exception, House Members who appeared before the Transportation and Aeronautics Subcommittee supported enactment of H.R. 8298 as introduced. No one appearing before the subcommittee recommended this legislative monstrosity now before your subcommittee. The proposal, which is of dubious paternity, would:

1. Require filing of rates with the ICC by all water carriers on transportation of dry bulk commodities. These rates would be subject to change only on 30 days notice and carriers would be subject to penalty and the enforcement procedures in sections 316 and 317 of the Act.

2. Add a new sentence in section 303(b) to permit certificated carriers to mix in a single tow not more than three dry bulk commodities with regulated non-bulk freight without losing the exemption on the bulk commodities.

3. Set a two-year expiration date on the provision of the bill as reported and require a report from the ICC 90 days prior to the expiration of the two-year period on the effects of the changes in force during the period.

4. Authorize the ICC to require filing by the barge lines of such informational reports as are required by the Commission.

All this is a far cry from the original provisions of H.R. 8298 and other identical bills, as originally introduced. The authors of these bills sought "(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' provisions which limit the exemption of dry bulk commodities."

These proposals had a good beginning. Hearings on the original version of the measure proved that mixing of regulated and non-regulated commerce on our inland waterways would be for the public good in that transportation costs would be kept low and even possibly lower.

Now the bill, as passed by the House, is not in the public interest. The original authors admit it; it is not as they intended.

The hundreds of small, non-regulated water carriers who haul 90% of the tonnage would become regulated and transportation costs would have to go up.

As we stated in our dissenting views, filed with the House Committee Report:

"To require the publication of rates by all of these small bargelines can be of no use to anyone except competing modes and even to them more for harassment than for actual economic advantage. The proponents of this legislation say that the publication of rates is not burdensome, yet the bill, on its face, admits to complete uncertainty of its effect by limiting its life to two years and calling for a report to Congress at that time to see what damage has been inflicted. At the same time, some of these same proponents of the bill claim that the publication of rates is really meaningless because only minimum rates will be filed. Is it the business of Congress to experiment with the fate of hundreds of bargelines by passing legislation with admittedly uncertain repercussions?

Is it the business of Congress to pass meaningless legislation?

When this Committee bill was brought up for consideration in the House of Representatives, I offered a substitute amendment which would have struck everything after the enacting clause and substituted language which would merely have required the filing of minimum rates by the regulated carriers while recognizing the right on their part to mix regulated with exempt dry bulk commodities in the same tow. My amendment would have done nothing to change the present status of the unregulated carriers. Unfortunately, my proposal was narrowly defeated.

There is no justification for involving the unregulated water carriers in the mixing dispute between the regulated water carriers and the railroads. The unregulated carriers are not permitted to move regulated commodities in the first place. To subject unregulated carriers to rate regulation without giving these same carriers the usual benefits and protections incident to such regulation would be unprecedented and grossly unfair.

Congress in its consideration of this issue should give primary consideration to the desires of the producers, shippers and consumers rather than to the self-

interest of any carrier group. There can be no question that the producers, shippers and consumers quite uniformly oppose the enactment of H.R. 8298 in its present form.

Finally, I want to emphasize very strongly that my fundamental concern here is with the preservation of efficient and economical barge transportation for all of us including both the members and the ultimate consumer.

Senator HOLLINGS. The committee will next hear from Mr. Hershey—I believe it is Mr. J. W. Hershey—who is chairman of the board of the American Commercial Lines.

Before you proceed, Mr. Hershey, I just want to ask Mr. Isbell and Mr. Donnelly, who are somewhat down this list of witnesses, if they are prepared, to appear immediately after Mr. Hershey. We would appreciate it, because the Senator from Tennessee is interested very much in the testimony of these two witnesses and he has the first amendment on the floor at 10 o'clock and has to be on the floor.

Now, Mr. Hershey, we are delighted to hear from you at this time, sir.

STATEMENT OF J. W. HERSHEY, CHAIRMAN, AMERICAN COMMERCIAL LINE CO., HOUSTON, TEX. AND JEFFERSONVILLE, IND., ON BEHALF OF WATER TRANSPORT ASSOCIATION

Mr. HERSHEY. Thank you, Mr. Chairman.

I am board-chairman of American Commercial Barge Line Co. of Houston, Tex., and Jeffersonville, Ind., and I appear here today as chairman of the legislative committee of the Water Transport Association, a nonprofit trade group headquartered in New York City.

I am here to represent the leading ICC-certificated common carrier bargelines operating on the Mississippi-Ohio River system and the Gulf Intracoastal Canal, as well as more than a dozen of the unregulated bargelines affiliated with the common carriers.

These unregulated bargelines move more traffic than the regulated companies.

Water Transport Association also has among its members leading bargelines on the Columbia River, on the Atlanta Intracoastal Waterway, steamship lines on the Great Lakes, and coastwise and intercoastal operators.

I would like to file this statement in its entirety, and I will attempt to summarize from it to some limited extent to stay within the 10 minutes which you requested.

The heart of this legislation is the modernization of the so-called dry-bulk exemption, sections 303(b), to permit the mixing of regulated and unregulated barges in a single tow.

We are glad to say that everybody now believes that this part of the bill is in the public interest.

The bill also provides for publication of rates on dry-bulk commodities. It does not provide for any regulation of rates or regulation otherwise of any carrier. It also provides for a report by the Interstate Commerce Commission on the impact of the bill and an expiration date of 2 years from enactment so that the Congress can take another look at the problem and determine what the permanent policy should be for the long term.

This subcommittee and the full committee has on record the many data which have been filed concerning the increase in productivity and

the value to the public of continuing to be able to mix regulated and bulk commodities, so I will not attempt to comment further on that point.

Fundamentally, this measure strengthens the common carrier segment of the transportation industry, both rail and water.

In the light of the difficulties being experienced by rail common carriers, it is particularly appropriate to adopt this bill. I find it difficult to believe that after water, rail, and truck common carriers have supported a measure to provide greater equity in regulation and, after the House has acted, the railroads will be told that they, after all, are not entitled to this single step in the direction of regulatory equity.

Today, bulk rates are secret and subject to change without notice. Railroad rates on these same commodities are regulated, can be changed only on 30 days' notice and are public knowledge. Therein lies the present inequity.

Unfortunately, the issue of publication of rates has become controversial and has deliberately been obscured by commingling with the idea that this publication is equivalent to regulation, which it is not. It is the only controversial issue. Our members support recording of rates on dry-bulk commodities as in the public interest. Those opposed support secrecy in ratemaking and this must mean they must have something to hide. What they have to hide is very likely to be contrary to the public interest. The consumer has a right to know transport rates.

If all rates are placed on the top of the table in public view—both water and rail—the consumer will benefit. First, more—not less but more—intensive competition is possible and this will lead to greater efficiency by both barge and rail carriers and hence to lower rates for the consumer.

Second, discrimination in favor, for example, of large shippers, is much more difficult if all the rates are on the table.

Lastly, the public has a right to know transport rates because unless they do know the transportation rate, they cannot be sure they are paying the same price for the final product as others.

The farmer has an urgent reason for knowing the transport rate. He is entitled to a higher price when his product goes by lower cost water transportation. If he knew the transport rate, he would know how much of the transport saving the middle man passed on to him and how much he put in his own pocket.

We have heard that public recording of rates is an excessive burden on 1,700 small barge operators. Now, this is false. This is a complete myth. In the first place, the exemptions from rate filing in the proposed bill are many and various. All private carriers are exempted, so are all liquid carriers and the hundreds of small harbor carriers. Intrastate carriers and Great Lakes carriers need not file rates under this bill. When you take out all those operators, we believe that less than 200 will have to file, probably less than 100. The bill covers those who actually compete in "for-hire" interstate carriage of dry-bulk commodities.

I am very much aware that there will be a wide disparity between the informed judgment of the common carriers based on a detailed review of the operators named in the Corps of Engineers listing, and others who appear here. It is because of this disparity that we need

this bill. Sound policy cannot be made by the Congress unless the facts are known as to what is going on in this important segment of the transportation industry.

Looking into the question of the size of the operations that would be affected, we find those complaining most vociferously are subsidiaries or affiliates of very large shippers. But even those operators who are not connected with larger corporations do not qualify as small business. A barge today costs anywhere from $85,000 to $90,000 and a second hand towboat of 3,000 horsepower suitable for interstate operations will cost about $300,000.

By contrast 10 of the smallest truckers have investments under $100,000 and yet they file rates and, in addition, are subject to full ICC regulation.

A rate filing is simplicity itself. For bargelines all that is necessary is a couple of sheets of paper listing origin destination, and the commodity and the rate. There are experts who make a business of rate filings for transportation companies of all modes and do it so cheaply that one really can seldom justify doing the job oneself.

We have heard that the exempt carriers get nothing out of this bill. They have to publish rates, the argument runs, and yet they get no benefits. The short answer to this is that if it is in the public interest for them to publish rates they ought to do so. But the allegation that they get no benefits is a myth. They get a lot. First, they get an opportunity, which they haven't had in many years, to handle regulated freight along with their bulk traffic as incidental towers for the certified carriers.

Second, they will know the rates charged by their competitors, all dry-bulk operators, and will have a better chance to compete for this traffic.

Third, there may be more stability in the rate structure and, if so, this will provide opportunities for longer range financial planning out ahead which will benefit the public in insuring low rates and adequate barge capacity.

An objection frequently heard is that a barge carrier may find a shipper who wants him to backhaul a particular commodity, but is prevented from engaging the service because no rate is on file and no rate can be effective except on 30 days' notice. There are several ways of meeting this problem. The carrier can simply file a schedule of rates blanketing all the ports he is likely to visit and all the commodities he is likely to handle. A simpler method would be for the barge carrier to concur in the tariff filing of the common carriers as his own. He will then have a rate for any conceivable movement.

Lastly, the fast filing provision of the Interstate Commerce Act is specifically designed as another way of meeting this problem. He can make a rate effective in less than 24 hours if he needs to do so. This system works well for small truckers who have the same problem.

The various objections on the part of the shippers to filing of rates by barge seem to fall to the ground in the light of the fact that these same dry-bulk commodities are shipped in much greater volume by rail at published rates and also regulated rates.

In summary, ICC certificated water carriers believe H.R. 8298 to be the kind of public interest compromise that makes sense. It continues low rates resulting from mixing regulated and unregulated

commodities. It makes significant progress on the problem of inequity in regulation. Third, it provides for a fairer climate for competition and for more intensive competition, and lastly, it provides for assembly of information on what is going on in the exempt sector of transportation. This information will be an invaluable tool in formulating future policy decisions. And it is not now available. The lack of it has been a major stumbling block to policymaking for many years.

One brief comment on Mr. Nelsen's statement. I would like to remind you that his own committee failed to endorse his views by three to one.

We have previously supported in the House a change in the bill to exempt deep draft self-propelled coastwise operators. We now would like to withdraw our support for that exemption at this time. The chief problem here is that no one knows how much tonnage would be involved or how many ships.

Despite efforts in the House committee staff to obtain this information or from those favoring the change, it has not been available.

In concluding, I would like to make the suggestion that your committee might ask each and every one of the witnesses who appear here in opposition to the publication of rates the question: "Why do you insist on secret rates?"

That concludes my testimony, Mr. Chairman.

Senator HOLLINGS. Well, now, that would be a good idea if we considered them secret.

What's the price of an automobile? I go down and buy a car that may be advertised. The price is right there, and you may be haggling for a price to buy the car. Is it alleged the prices of the entire automobile industry are secret?

Let me get to it. Congressman Nelsen said the original thrust was to solve the mixing problem. It appears from your testimony that the principal and original thrust, as you see it, is to regulate nonregulated carriers. Am I right in that?

Mr. HERSHEY. No, that is not correct. I did not dwell on the advantages of mixing because I believe that the committee is fully aware of that. We support it. It is our first aim. As far as we know there is no one in opposition to it.

I only dwelt on that portion of the bill which is controversial.

Senator HOLLINGS. Well, the nonregulated or exempt carriers are not able to carry regulated commodities at the present time so the "no mixing rule" doesn't apply to them. They can't carry regulated commodities anyway. Isn't that right?

Mr. HERSHEY. That is correct, sir.

Senator HOLLINGS. Well, then, why is it necessary to require these nonregulated carriers to file rates?

Mr. HERSHEY. It's not necessary. The committee——

Senator HOLLINGS. Then, if it is not necessary, we can go and delete all this rate argument between regulated and nonregulated and go right to the original thrust—namely, the mixing problem—and see if we could solve that in the closing days of Congress? Would you agree to that?

Mr. HERSHEY. This would certainly solve our number one aim.

You will recall that in previous bills this is all we asked for. Early in the game the unregulated carriers as represented by AWO, Amer-

ican Waterway Operators, Inc., appeared in opposition to it. Likewise the railroads.

Now, fortunately, the opposition to that part of the bill, which is the principal part of the bill, no longer exists.

Senator HOLLINGS. Now, Mr. Hershey, you said there were how many regulated carriers? I get the percentages—the 8 and the 68 percent. How many regulated carriers? I'm not as familiar as I should be with this problem. How many regulated carriers generally?

Mr. HERSHEY. The regulated carriers are distinctly in the minority. They move about 35 percent of the traffic. They are generally somewhat larger companies than the average.

I would say we represent in our association approximately 18 regulated carriers.

Senator HOLLINGS. Eighteen regulated carriers in your association? And how many regulated carriers overall?

Mr. HERSHEY. I really can't tell you. I think I could provide the committee with that information.

Senator HOLLINGS. Would it be nearer 50 or 100?

Mr. HERSHEY. I would think it would be nearer 50 than 100.

Senator HOLLINGS. All right. Approximately 50. And what are you really talking about when you outline in your prepared statement on page 9 all the exemptions? You see, you mentioned that fine thing of secrecy. We'll apply that to every one of your exemptions. Then the question is, why let the private carriers be secret? Why let the liquid carriers be secret? Why let the hundreds of small harbor carriers be secret? Why let the intrastate carriers be secret? Why let the Great Lakes carriers be secret?

We go right down your suggested list and apply it to each one of the exemptions.

You are only trying on behalf of 50 to grab 100? Is that what you're talking about? Is it 100 of the nonregulated that you are really after?

Mr. HERSHEY. We're not after——

Senator HOLLINGS. You say probably less than 100.

Mr. HERSHEY. We're not after anybody. We just want to be able to continue to mix commodities. And we think this is a good bill.

Generally speaking, the vast majority of interstate traffic that moves by all modes moves under published rates. The big exemption in this picture is, of course, the dry-bulk exemption on the river.

Senator HOLLINGS. Well, that's the information I should have. Eight percent carry how much? And the 68 percent nonregulated carriers carry how much of the freight to be hauled?

Mr. HERSHEY. You recognize I am sure that information on this is not really available because there is no reporting. The only thing that you can do is to take the relatively rough figures of the U.S. Engineers, which are based primarily on transit through locks, and try to relate that to the type of carrier which made the transit.

On that basis we estimate that approximately 35 percent of the traffic on the inland waterways system exclusive of the Great Lakes—we don't have any figures on that—is moved by regulated carriers and the balance is moved by unregulated. And the unregulated includes many private carriers as well as unregulated for-hire carriers.

Senator HOLLINGS. Thank you very much.

Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much. I have only one question I would ask the witness at this point.

May I say that he may sense that I am trying to expedite this so that I can move on to the floor at 10 o'clock. There are other questions that occur to me and that we may have a chance to get into with other witnesses.

But specifically, in view of the importance of the contention that all carriers should be treated equally for rate-filing purposes, could you tell us what problems if any you foresee in leaving rather broad discretion to the Interstate Commerce Commission by requiring filing under section 306 and H. R. 8298?

Mr. HERSHEY. The section that you said was 306?

Senator BAKER. 306.

Mr. HERSHEY. Are you referring to the discretion that they would have in determining that rates would have to be either minimum rates or actual rates?

Senator BAKER. Yes.

Mr. HERSHEY. I don't see any particular problem. I think they have a job to do, just as they did in the early days of the trucking industry in determining whether a theretofore unregulated trucker was in fact a contract carrier or a common carrier.

I think it is a determination that would have to be made on the basis of how many customers have they served and how diverse has been their operating territory and how diverse has been the cargo which they carry.

Senator BAKER. What is the Interstate Commerce Commission's experience with their efforts in this respect with the truckers?

Mr. HERSHEY. I'm not too well qualified to talk about that because I wasn't in the trucking business at that time.

But I understand that many of the truckers wanted to file as contract carriers, and in some instances the Commission determined that they were in fact a common carrier.

Senator BAKER. It was a rather difficult proceeding, wasn't it, taken as a whole?

Mr. HERSHEY. From what I have heard about it, I think it was, yes, sir.

Senator BAKER. Thank you.

Mr. HERSHEY. Of course, there were many, many more truckers than there are actual interstate carriers of commodities.

Senator HOLLINGS. Thank you, Mr. Hershey.

Do you wish to add anything else?

Mr. HERSHEY. No. I have concluded.

Senator HOLLINGS. We appreciate very much your appearance here this morning.

Mr. HERSHEY. I appreciate the opportunity, sir.

Senator HOLLINGS. Thank you, sir.

(The statement follows:)

STATEMENT OF J. W. HERSHEY, CHAIRMAN, AMERICAN COMMERCIAL LINES, FOR WATER TRANSPORT ASSOCIATION

My name is J. W. Hershey, Chairman of American Commercial Lines of Houston, Texas and Jeffersonville, Indiana. I appear here today as Chairman of the legislative committee of the Water Transport Association, a non-profit trade group headquartered in New York. I am here to represent the leading ICC certificated common carrier barge lines operating on the Mississippi-Ohio River

System and the Gulf Intracoastal canal as well as more than a dozen of the unregulated barge lines affiliated with the common carriers. Water Transport Association also has among its members leading barge lines on the Columbia River on the Atlantic Intracoastal waterway steamship lines on the Great Lakes, coastwise and intercoastal operators which I also represent.

The heart of this legislation is the modernization of the so-called dry-bulk exemption, Sections 303(b), to permit the mixing of regulated and unregulated barges in a single tow. And I am glad to say everybody believes this to be in the public interest. The bill also provides for the publication of rates on dry-bulk commodities, for a report by the I.C.C. on the impact of the bill and, finally an expiration date of two years from enactment so that the Congress can take another look at the problem and determine what the permanent policy should be for the long term.

By far the most pressing problem faced by the barge industry and the consumers served by the barge industry is the fact that on September 28, 1970—next week—the current suspension by the I.C.C. of its order, which would have the effect of forcing us to operate regulated and unregulated commodities in separate tows, expires. Both the House Interstate and Foreign Commerce Committee and the Senate Committee on Commerce have, since 1967, requested the I.C.C. to stay the application of its order enforcing the so-called "no mixing rule" so that this legislation modernizing the statute may be acted on by the Congress. The industry is very much under the gun with this problem and we appreciate the prompt action of this committee in holding early hearings on the legislation following passage of the measure by the House.

As you are well aware, curing the problems of the no mixing rule, which is the subject of HR 8298, has been before the Congress, the I.C.C. and the courts for well over a decade.

The case for modernization has been fully made. Senator Warren G. Magnuson, appearing as a witness before this very subcommittee on June 28, 1967, said: "There should be no dispute at these hearings about the fact that the archaic and complicated mixing rule exemption in the 26-year old Transportation Act of 1940 stands as a bar to the realization of greater efficiency in inland waterway transportation."

Problem was also succinctly stated in the Report adpoted unanimously by the Senate Committee on Commerce on September 29, 1967:

"Technological innovation in the last 20 years has produced more powerful towboats on our Nation's inland waterways permitting the accummulation of large economical tow loads of 40 or more barges.

"This technological progress would be brought to a standstill under obsolete and restrictive wording in section 303(b) of the Interstate Commerce Act. S. 1314 proposes to modernize this law to avoid artificial increases in transportation costs to shippers and consumers."

One virtue of this long delay in arriving at a solution for the problem is that a huge record has been developed and a great many facts are clearly beyond dispute.

For example, when, in 1961, these same barge carriers appeared before the Senate Committee on Commerce with the first modest proposal for curing the mixing problem, the barge industry was quite badly split on the question of mixing.

That is no longer so.

The May 2, 1970 Weekly Letter of the American Waterways Operators, Inc., while reiterating opposition to the recording of rates stated:

"AWO supports the provision of the bill which would permit the mixing of regulated commodities and exempt dry-bulk commodities in the same tow or vessel and will seek to have this provision retained by the House."

As the years have gone by, facts and studies have accumulated. The result has been that there is no controversy over the fact that the mixing of barges of regulated and unregulated commodities in a single tow is very much in the public interest. It has led to improving productivity in inland barging, it has brought about larger more economical tows, more powerful towboats and lower unit costs. There has been a decline in the average level of barge rates so that today we can say that the average level of barge rates is below that of 1920. Few other industries can demonstrate that their improved technology has enabled them to contain the rises in costs and the inroads of inflation as effectively as can the inland barge industry.

I should stress one very important fact. The beneficial effects of the improved technology have already been passed along to shippers and consumers in the

form of low freight rates. Failure to cure the "no mixing" problem will mean that something the public now enjoys will be taken away.

The tremendous technological achievement is described in a statement prepared for and made part of the record of the hearings of the Senate Committee on Commerce on S. 1314 on June 28, 1967, by L. P. Struble, Jr., Executives Vice President of the Dravo Corporation, Pittsburgh, Pa. In the interests of time, I have not recalled Mr. Struble, but am attaching his paper "Technological Developments on Inland Waterways" to my testimony. There is nothing controversial about the hard work, ingenuity and willingness to taken financial risks in the interests of greater efficiciency in transportation recounted in this paper. The facts are well established and all credit goes to the inland shipyards for a remarkable contribution to holding down the costs of inland water transportation.

Since we testified before this Committee in 1967 we have obtained the answer to the question: What would happen to barge line costs if the mixing problem is not cured? Dr. Karl Ruppenthal, Director of Transportation Management of Stanford University, made a study of the barge tows actually operated in 1967 to determine the economic impact of applying the "no-mixing rule" to traffic of the major certificated barge lines in that year. With the aid of the Stanford computer, he used two methods to estimate cost effects of unmixing the tows. In one case, total costs per ton mile would have increased by 60 percent. In the other total costs would have increased about 47 percent. Thus the magnitude of cost increases involved is clearly in the neighborhood of 50 percent.

It is obviously difficult to determine with any precision from a 1967 study the impact of such enormous cost increases on rates, but it is evident that rate increases would have to be very substantial if this bill fails.

After over a decade of wrestling with attempts to arrive at an acceptable modernization of Section 3003(b) so as to permit mixing, we have concluded that any solution must take into account three very stubborn facts.

The first stubborn fact is that a modernization of the Act to permit mixing of regulated and unregulated barges in a single tow and the full utilization of the capacities of the larger towboats is in the public interest.

The second stubborn fact is that, as the Senate Committee on Commerce recognized in its 1967 Report, "competitive equality must be established for all modes of transportation so that rights under law granted to one mode shall also be granted to other modes similarly situated."

The third stubborn fact is that the House Interstate and Foreign Commerce Committee by a three to one bi-partisan vote demanded and the House adopted a measure which connects correcting the no mixing problem with going at least part of the way toward curing inequality in regulation between railroads and water carriers.

We came before the Senate Committee on Commerce in 1967 with a proposed bill which made a very fundamental reform of Section 303(b). We suggested a cure for mixing, the removal of the three commodity limitation in the section and elimination of the relatively meaningless reference to commodities carried according to the custom of the trade in June, 1939. We believed then and we still believe that this proposal is in the public interest. The Senate Committee on Commerce so found in its unanimous Report.

In studying the matter exhaustively, the House Subcommittee on Transportation and Aeronautics saw an opportunity to take a step in the direction of improving the conditions of competition both within the barge industry and between the barge industry and the railroad industry.

They took the stubborn fact that mixing is in the public interest and the stubborn fact that the public interest requires greater equality of regulation and put the two facts together.

They added to the mixing cure, which is accomplished by language proposed by the I.C.C., a provision for the recording of dry bulk-rates—not regulation of such rates—but simply a recording of rates with the I.C.C.

They added as a third provision of the proposal that the I.C.C. will make a study and report back in two years at which time such further action would be taken as may be deemed appropriate.

We have therefore a cure for the no mixing problem, recording of rates on dry-bulk commodities by barge, an expiration date for the legislation and a study to provide guidance for future action.

Now we are frank to say that the water carriers didn't get everything we thought the situation seemed to warrant. On the other hand, the essential requirement that mixing be continued is preserved. The railroads, it is clear from the record, did not get everything they thought the situation seemed to warrant. But they have made progress.

The fact is that the compromise is a good one in the public interest and we support it without amendment.

Fundamentally this measure strengthens the common carrier segment of the transportation industry, both rail and water. In the light of the difficulties being experienced by rail common carriers, it is particularly appropriate to adopt this bill. I find it difficult to believe that after water, rail and truck common carriers have supported a measure to provide greater equity in regulation and, after the House has acted, the railroads will be told that they, after all, are not entitled to this step in the direction of regulatory equity.

Today, bulk rates are secret and subject to change without notice. Railroad rates on these same commodities are regulated, can be changed only on thirty days' notice and are public knowledge. Therein lies the present inequity.

Unfortunately, the issue of publication of rates has become controversial, but it is the only controversial issue. Our members support recording of rates on dry-bulk commodities as in the public interest. Those opposed support secrecy in rate-making and this means they must have something to hide. What they have to hide is very likely to be contrary to the public interest. The consumer has a right to know transport rates.

If all rates are placed on the top of the table in public view—both water and rail—the consumer will benefit. First, more intensive competition is possible and this will lead to greater efficiency by both barge and rail carriers and hence to lower rates for the consumer. Second, discrimination in favor, for example, of large shippers, is much more difficult if all the rates are on the table. Lastly, the public has a right to know transport rates because unless they do know the transportation rate, they cannot be sure they are paying the same price for the final product as others. The farmer has an urgent reason for knowing the transport rate. He is entitled to a higher price when his product goes by lower cost water transportation. If he knew the transport rate, he would know how much of the transport saving the middle man passed on to him and how much he put in his own pocket.

I need not elaborate further. As one of the barge line presidents recently said, we have truth in lending, truth in packaging and shortly we hope to have truth in transportation.

We have heard that public recording of rates is an excessive burden on 1700 small barge operators. This is a myth. In the first place, the exemptions from rate filing in the proposed bill are many and various. All private carriers are exempted, so are all liquid carriers and the hundreds of small harbor carriers. Intrastate carriers and Great Lakes carriers need not file rates under this bill. When you take out all those operators, we believe that less than 200 will have to file, probably less than 100. The bill covers those who actually compete in "for-hire" interstate carriage of dry-bulk commodities.

I am very much aware that there will be a wide disparity between the informed judgment of the common carriers based on a detailed review of the operators named in the Corps. of Engineers listing, and others who appear here. It is because of this disparity that we need this bill. Sound policy cannot be made by the Congress unless the facts are known as to what is going on in this important segment of the transportation industry.

Looking into the question of the size of the operations that would be affected, we find those complaining most vociferously are subsidiaries or affiliates of very large shippers. But even those operators who are not connected with larger corporations do not qualify as small businesses as that term is usually understood. A barge today costs anywhere from $85,000 to $90,000 and a second hand towboat of 3,000 horsepower suitable for interstate operations will cost about $300,000. Ten new barges and one old towboat requires an investment of about $1,200,000 or 10 old barges and one old towboat will require at least $750,000.

By contrast 10 of the smallest truckers have investments under $100,000 and yet they file rates and, in addition, are subject to full I.C.C. regulation.

A rate filing is simplicity itself. For barge lines all that is necessary is a couple of sheets of paper listing origin destination, the commodity and the rate. There are experts who make a business of rate filings for transportation companies of all modes and do it so cheaply than one really can seldom justify doing the job oneself.

We hear that the exempt carriers get nothing out of this bill. They have to publish rates, the argument runs, and yet they get no benefits. The short answer to this is that if it is in the public interest for them to publish rates they should do so. But the allegation that they get no benefits is a myth. They get a lot. First, they get an opportunity, which they haven't had in many years, to handle regulated freight along with their bulk traffic as incidental towers for the certificated

carriers. Second, they will know the rates charged by all dry-bulk-operators and will have a better chance to compete for this traffic. Third, there may be more stability in the rate structure and, if so, this will provide opportunities for longer-range financial planning out ahead which will benefit the public in ensuring low rates and adequate barge capacity.

Some shippers have stated that they are accustomed to hiring barge transportation on a spot basis and will be disadvantaged by a 30-day filing notice. The ability to negotiate very low barge rates on a spot basis, for example, for a back haul, may be an advantage to some, but it is a disadvantage to others. If rates are recorded and subject to change on 30 days' notice, the shipper whose "front haul" is in effect subsidizing someone else's shipment will know the rate and may ask to share in the economies of a two-way haul. As it is now, he never knows what the back haul rate is.

A similar objection frequently heard is that a barge carrier may find a shipper who wants him to back haul a particular commodity, but is prevented from engaging the service because no rate is on file and no rate can be effective except on 30 days' notice. There are several good ways of meeting this problem. The carrier can simply file a schedule of rates blanketing all the ports he is likely to visit and all the commodities he is likely to handle. A simpler method would be for the barge carrier to concur in the tariff filing of the common carriers as his own. He will then have a rate for any conceivable movement. Lastly, the fast filing provision of the Interstate Commerce Act is specifically designed as another way of meeting this problem. He can make a rate effective in less than 24 hours if he needs to do so. This system works well for small truckers who have the same problem.

The various objections on the part of the shippers to filing of rates by barge seem to fall to the ground in the light of the fact that these same dry-bulk commodities are shipped in much greater volume by rail at published and also regulated rates.

In summary, ICC certificated water carriers believe HR 8298 to be the kind of public interest compromise that makes sense. First, it continues low rates resulting from mixing regulated and unregulated commodities in a single tow; second, it makes significant progress on the problem of inequity in regulation; third, it provides for a fairer climate for competition and for more intensive competition, and lastly, it provides for assembly of information on what is going on in the exempt sector of transportation. This information will be an invaluable tool in formulating future policy decisions. Such information is not now available. The lack of it has been a major stumbling block to policy-making for many years.

We respectfully urge the Committee to adopt HR 8298 without amendment. Thank you.

Senator HOLLINGS. Now, Mr. J. E. Isbell, Jr., director of transportation for Foote Mineral Co.

Will you come forward, please, sir.

You may proceed, sir.

STATEMENT OF JAMES E. ISBELL, JR., DIRECTOR OF TRANSPORTATION, FOOTE MINERAL CO., EXTON, PA.

Mr. ISBELL. My name is James E. Isbell, Jr. I am director of transportation for the Foote Mineral Co. with offices at Route 100, Exton, Pa.

I appear this morning in behalf of my company as one who has been interested in waterway shipping for about 20 years.

Our company is involved in the mining, milling, purification, and smelting of minerals and in the manufacture of various chemicals, ferroalloys, lime, and other minor products. These operations are carried on at some 13 plant locations in the United States, located in 11 different States, and we do business in all States as well as in foreign commerce. The sales of our company are approximately $100 million per year.

In the conduct of this business, we cause to be shipped substantial quantities of freight resulting in an annual freight bill of approximately $12 million. Approximately 60 percent of this freight is spent with the Nation's railroads, approximately 30 percent with motor carriers, and approximately 10 percent with the inland waterway carriers. Transportation costs are a major cost factor in the operation of our company and we are, therefore, deeply concerned with all matters of general interest pertaining to transportation in the United States, and in particular this bill before you today.

We are very much opposed to the present bill in the form in which it is now presented to you. We believe it will result in less efficient water transportation and higher costs. We believe that in spite of the many years that the subject of a barge mixing bill has been discussed, this particular bill in its present form is little understood. The general publicity on this bill has indicated that it is a bill designed to permit the barge carriers to mix barges of regulated and nonregulated products in their tows and, with the possible exception of the railroads, all interested segments of the transportation industry agree that such a provision is necessary in the law.

It is our belief that the reason that the publicity this bill has received has not been thorough enough for the interested persons and groups to grasp the significance of the further provisions of this bill that calls for filing of freight rates is because the House committee drastically amended the original bill but did not permit further hearing on the amended bill in order that the significance and the possible results of the amendments could be fully aired.

It now appears that the Senate may also be rushing the consideration of this bill in face of the Interstate Commerce Commission's compliance order date of September 28, 1970.

Even if your committee allowed adequate time for hearings to fully air the issues, time would not permit the information developed to permeate the industry in order to get the reaction of all concerned in time to proceed with the orderly passing of a bill and meet the Commission's compliance order date.

We submit that this bill will be a great detriment to the transportation system of the United States and particularly to the inland waterways segment and that a bill must not be pushed through simply in order to meet the compliance order date of the Interstate Commerce Commission. We do not believe that compliance with the Commission's no mixing order, at least for a short time until this bill or a better substitute could be fully aired, would be fatal to the long-range progress of the inland waterway industry, but conversely we feel that the passage of the bill in its present form would be fatal to such progress.

The traffic of our company on the inland waterways consists of both regulated and nonregulated products. We feel very strongly that the carriers should be permitted to mix, indiscriminately, barges of regulated and nonregulated products in their tows. We have supported every bill that has come before the Congress in the past several years to provide for such mixing arrangement. We supported this bill when it was originally submitted to the House committee. To simply provide for the mixing would maintain the status quo of the past 30 years during which time the inland waterway segment of our national trans-

portation system has grown tremendously, has been the most prosperous of the three main classes of freight carriers, rail, truck, and barge. During this time the cost of shipping via the inland waterways has been drastically reduced.

Furthermore, our experience over the past 12 to 15 years clearly shows that it has been the nonregulated barge carrier that has been the innovator responsible for more economical transportation in the inland waterway industry. This is true in spite of the fact that the full service carrier who is authorized to provide transportation on regulated products as well as nonregulated products should, without question, be in a position to operate more efficiently as he has more options open to him.

The rate filing provision of the bill as it now stands would strip the industry of this very healthy situation that has brought great progress by taking away from the small unregulated carrier the only tool he has to help him compete with the larger, full service carrier. It is so well established that it may be considered axiomatic that the publishing of pricelists, which in essence is the exchange of price information, always has an anticompetitive effect, chilling the vigor of price competition. When price competition is chilled, it generally follows that there become fewer and larger companies in the field resulting in an oligopoly or possibly in the case of the regulated carrier industry, a regulated cartel with all of the ills that flow from either.

The filing provision of this bill is only the first step in our opinion toward stricter regulation. Once regulation starts, it seems to be irreversible. What our national transportation system needs is more free competition, not more regulation. The railroad industry very inconsistently is supporting, and actively lobbying for, this bill while at the same time spending thousands of dollars in public relations to carry the message that they are overregulated and that legislation should be enacted that will give them more managerial discretion in the running of their own affairs. We agree with them in this philosophy.

I would remind you that our company's business with the railroads is seven times that of our business with the inland waterway carriers, and you may be sure that we would not come before this committee to testify to something that we feel would be of detriment to the railroads.

We do not believe that the railroads are losing any appreciable amount of business because of the lack of knowledge of the rates being charged on unregulated waterway traffic. We are all familiar with what some have called the liquidity crisis in the railroad industry today but I would caution that we should not make the mistake of assuming that if this bill is bad for the waterway industry it will be good for the railroad industry and that they need this kind of help. What the railroad industry needs is less regulation for itself rather than more regulation for its competitors.

I submit to you that this bill would be the first step in strict economic regulation of the now unregulated water carrier and as I look around the industry I see nothing to recommend more stringent economic regulations of our carriers.

Thus, in closing, I would summarize by saying that the requirement of filing of rates will bring about the demise of the small unregulated water carrier with the remaining carriers all charging the same freight rates with the result that service would deteriorate, innovation and

technological advancement would become less pressing, resulting in increased cost of operation which ultimately the general public will have to pay for, adding to inflation and limiting the manufacturing industries of our Nation in their efforts at international trade.

In the water carrier industry today, business is awarded by shippers and is solicited and obtained by carriers on the basis of sound economics. The carrier whose traffic pattern fits that of a given shipper will generally be the successful carrier in bidding for the business that complements his operation and permits him to operate more efficiently. When all rates are published and there is no difference, traffic is awarded on the basis of things totally unrelated to economics and sound efficient operation.

We pray that you will not let this dastardly bill become law under the guise of a progressive measure designed to permit the carriers to mix their regulated and nonregulated products in the same tow.

Regardless of the position that the Interstate Commerce Commission may take with regard to its compliance order, we urge you to hold this bill in committee for further and more detailed hearings and study, and we would urge you to give consideration to the original bill, H.R. 8298, which had the unanimous support of all segments of the waterway industry as well as the users.

Senator HOLLINGS. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

I must say at the outset—and I suppose entirely facetiously—that after your energetic statement, Mr. Isbell, there may be some danger that neither carrier will carry your products after this hearing is over.

And I must also say, not facetiously at all, that I think there is little room for failing to understand your position.

Is it fair to say, however, that your opposition to the bill goes to the rate filing provisions and not to the mixing provision?

Mr. ISBELL. Yes.

Senator BAKER. I have no further questions.

Senator HOLLINGS. Thank you, Mr. Isbell.

Mr. Donnelly, will you come forward, please? The executive vice president of the Ingram Barge Co.

You may proceed, please, Mr. Donnelly.

STATEMENT OF JOHN M. DONNELLY, EXECUTIVE VICE PRESIDENT, INGRAM BARGE CO.

Mr. DONNELLY. Thank you, Mr. Chairman.

My name is John M. Donnelly. I am executive vice president of Ingram Barge Co., a division of Ingram Corp., with principal offices in New Orleans, La., and Nashville, Tenn. Ingram Barge Co. transports both liquid and dry bulk commodities in the inland waterways. It also holds a contract carrier permit from the Interstate Commerce Commission to engage in general towage.

The so-called mixing rule bill was first introduced to accomplish far more than mixing. It was designed to allow all barge lines to take advantage of the technologies developed over the years. These would allow freight to be transported more economically. There are certain restrictions contained in the Interstate Commerce Act and interpretations to those laws which prohibit water carriers from obtaining these advantages. The restrictions are outmoded and artificial in nature and

result in higher costs to the carrier, to the shipper, and to the consumer. They benefit no one and exist to the detriment of all. Clearly, they are not in the public interest.

All barge lines favored the original bill as it allowed both certificated common carriers and uncertificated carriers to realize the cost savings that were possible. The bill passed by the House of Representatives eliminated only one of these restrictions. This would allow the relatively few carriers with Interstate Commerce Commission authority to mix regulated and unregulated commodities in the same tow of barges. The bill does nothing to remove restrictions on the far greater number of uncertificated carriers that had hoped to be able to transport more than three dry bulk commodities at the same time nor does it enable them to move dry dry bulk commodities that were not being transported prior to June 1, 1939.

Instead of being a bill constructed to help these operators, the House-passed version, H.R. 8298, will penalize them for it contains provisions that will saddle these carriers with administrative regulations and costs they have never had to assume before.

The many unregulated carriers will now become quasi-regulated through provisions in the bill which have never been the subject of any hearings whatesoever.

I refer now to the requirement that would make it incumbent on all carriers of dry bulk commodities to file rates with the Interstate Commerce Commission. Additionally, they would not be permitted to change these rates without the giving of at least 30 days' notice. And additionally still, they would be subject to the open-ended provision of submitting to the Interstate Commerce Commission "such reports containing such information as the Commission may prescribe."

No public record exists on these provisions. No testimony has ever been given nor was it allowed to be given as to the effect of these provisions. They were inserted in the bill after all hearings were completed. At this point, no one knows the lengths to which the Interstate Commerce Commission would require these carriers to go in the preparation and submission of this information. The carriers subject to this requirement are not experienced in the filing of tariffs nor do they presently have the staffs for such purposes. This can only drive up their costs.

And I might add, Mr. Chairman, I have a September 12, 1970, issue of the Waterways Journal, which is a well-known publication in the inland waterways field, and in anticipation that H.R. 8298 will be passed there are already traffic consultants who are advertising their services to help carriers of dry bulk commodities—for a fee, of course—because they realize they don't have the staff to accomplish this by themselves.

I think if you will examine the costs of transporting freight by water over the last decade, particularly unregulated commodities, you will find that these transportation rates have been kept stable and in many cases have dropped in a time that the country has experienced considerable cost inflation.

It is true that not all shippers will be affected by this rate filing provision in the bill. Those who ship regulated commodities such as steel or paper products, for example, already experience complete regulation and will not be affected. Those who ship grain or coal or dry fertilizers

will be affected. We believe those affected can best tell you what the results of the bill will be. It is a fact that unregulated commodities generally cost the shipping public less to transport than regulated commodities.

The Interstate Commerce Commission would also be required to report to Congress in slightly less time than 2 years as to what they had determined the effect of this bill had been. It is a natural desire for those in control of an organization to make it grow. With growth comes greater scope, more job security, more prestige. This is true of businesses just as it is also true of governmental agencies. They want more power and they use it in the ways that they have been trained to use it.

I do not know exactly how the ICC would interpret the mass of information and rates that they would receive under H.R. 8298, but I do feel very certain of their conclusion. Just as the surgeon is inclined to use the knife, so would the Interstate Commerce Commission see in total regulation the answer to many imagined problems or inequities.

In my opinion, the railroad industry is basically responsible for the insertion of the rate filing and reporting provisions of H.R. 8298. In effect, they have agreed with the certificated carriers that the railroads would not oppose their efforts to mix commodities as long as the certificated carriers would in turn support the rate filing and reporting provisions. Of course, the relief for the uncertificated carrier was left out.

Why are the railroads so interested in this bargeline bill and want them to file rates and reports and submit whatever information the Interstate Commerce Commission may require? The answer lies in regulation, total regulation. This bill is designed as the first step in bringing about total regulation of an industry that doesn't need it, the overwhelming majority of whose members don't want it, and whose customers, the shippers of unregulated commodities, are dead set against it.

If passed, no longer would the marketplace where buyer and seller are freely able to bargain be the determinant of price. Instead, there would be substituted an administered price further subjected to bureaucratic review. The proponents of the present bill realize that total regulation would be too much to expect today, so instead they have urged a bill falling somewhat short of complete regulation with the expectation of regulating it all in 2 years' time.

In short, Mr. Chairman, I do not believe that the salvation of the American railroad system lies in the crippling of its competition. Blunting the competitive edge of the bargelines does not serve the public nor in the long run will it serve the railroads either.

Thank you.

Senator HOLLINGS. Thank you very much, Mr. Donnelly.

Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much. I appreciate the chance to put my questions first, the hour of 10 having arrived and since I am going to have to go to the floor shortly.

I want to thank you for an excellent statement. I would explore these further points, if I may:

Do I understand that your opposition to portions of this bill is to the rate filing provision and not to the mixing provision of the bill?

Mr. DONNELLY. That is correct, sir.

Senator BAKER. And you, of course, are a certificated carrier?

Mr. DONNELLY. We hold a contract carrier permit for general towage. We are not a common carrier.

Senator BAKER. Mr. Donnelly, I take it you are familiar with the Nelsen amendment which was voted down in the House of Representatives?

Mr. DONNELLY. Yes, sir.

Senator BAKER. And could you give me your particular position on the Nelsen amendment?

Mr. DONNELLY. My position on the Nelsen amendment was that it was the only alternative to H.R. 8298 that existed at the time, and I overwhelmingly supported it in preference to the bill that was passed by the House.

Senator BAKER. What improvements would you offer to H.R. 8298 other than the Nelsen amendment?

Mr. DONNELLY. Mr. Senator, the improvements to H.R. 8298 that would be most beneficial to the bargelines, to the public, to the consumer, to all people, would be to eliminate those provisions having to do with rate filing, the lack of flexibility, and the ability to change rates.

In other words, the striking of the 30 days' notice and the requiring of reports by the Interstate Commerce Commission of unregulated carriers.

Senator BAKER. This is unduly philosophical, and I realize it calls for a rather general answer, but is it fair to say that you believe that, generally speaking, unregulated commodities or unregulated carriers produce lower costs to the shipper?

Mr. DONNELLY. Yes, I do. I think without question. I think this can be substantiated by study.

I think without question that unregulated commodities move on the river at lower rates than do regulated commodities, and I would simply suggest that you ask some of the shippers who ship both regulated and unregulated commodities.

Senator BAKER. Well, now, this is the plus side of the picture from your standpoint. Would you tell us what the minus side to nonregulation is? There are bound to be disadvantages as well.

Mr. DONNELLY. Well, the only—the minus side of nonregulation as it exists today is that those common carriers who hold certificates from the Interstate Commerce Commission are able to transport certain commodities that other carrier are not able to transport.

In effect, they have a closed club. And within that club there does exist higher prices on the few commodities that they are able to transport than the commodities that all carriers are able to transport.

Senator BAKER. Mr. Donnelly, I thank you for your testimony, which I think was excellent, and I must say the principal thrust of it would appear to this member of the committee to be a ringing condemnation of regulation generally. But we aren't concerned with that point here.

We are concerned with the rate filing provisions of this bill. It would be your preference that the original bill be passed without the rate filing provisions? Would that be your ultimate preference?

Mr. DONNELLY. If the choice was narrowed down to those two, without question that would be my preference.

Senator BAKER. Thank you very much.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you very much, Senator.

Let me try the Hershey approach. Why do you want to keep the rates of nonregulated carriers secret?

Mr. DONNELLY. I think, Mr. Senator, one of the things that I am terribly concerned about as regards the rate filing provisions is what I think they lead to. I think I have a glimpse of the future, and I am afraid that this is the first wedge in total regulation of pricing.

I think that you are beginning to tamper with the demand-supply mechanism when you approach total regulation, when you make a carrier give 30 days' advance notice of a change in a rate, even though a change in the supply-demand picture might result.

And I think this: I think that it has been the history of this country to ask for regulation, price regulation, when there has been demonstrable damage shown. No one has shown that there has been any damage to the shipping public nor to the consumers through the unregulation or the lack of filing of rates.

Senator HOLLINGS. So you say, in effect, that if it has been a secret it has not damaged the consumer or shipper? As far as we know, as far as the testimony—you are following the proposal before the Congress—do you know any testimony where the shipper comes in and says—perhaps we'll have it later today—that "the rates are secret and therefore I am being damaged, can't tell where I am headed, I'm being discriminated against, and competition is not there because it is secret?"

Mr. DONNELLY. I know of none, sir.

Senator HOLLINGS. I don't know of any either.

But is there sort of a trend, from your experience, for nonregulated carriers trying to become regulated?

Mr. DONNELLY. I think that under the present scheme of things there have been some that have wanted to become regulated.

When the Arkansas River was made navigable and petitions or filings were received by various carriers to become regulated, common carriers on the Arkansas River, there were a number of carriers that did not possess any degree of regulation at the time that did request of the Interstate Commerce Commission that they be allowed to become certificated common carriers on the Arkansas River for the pure and simple reason that this certificate would allow them to transport commodities that other people could not transport.

Senator BAKER. Let me ask one more question pursuing the negative side of this picture for a minute, trying to find out why nonregulation is not as good or why regulation is always bad.

In the case of railroads, for instance, I understand that one of the original justifications for the creation of the Interstate Commerce Commission and for regulation generally was to prohibit duplication of facilities and economic competition that produced prices below cost and thus force the economically weaker line out of business.

Does that same rationale apply to barge traffic?

Mr. DONNELLY. It has not up until this day, sir.

Senator BAKER. Of course, the facilities are built by nature rather than by man, so that would create a distinction, would it not, between railroads and——

Mr. DONNELLY. It would at least be one of the distinctions.

Senator BAKER. And in the case of economic restraint which is prohibited under rate regulation by the regulatory agency, I understand that the Sherman Act would apply to contract carriers and nonregulated carriers by water.

That is, if there was a rate fixing effort, a price fixing effort in order to drive a competitor out of business, you'd be responsible under the Sherman Act? Is that your information or not?

Mr. DONNELLY. I think that is correct. I'm not certain on it.

Senator BAKER. All right. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you, Senator Baker. And thank you, Mr. Donnelly.

Mr. DONNELLY. I appreciate the opportunity.

Senator HOLLINGS. I would ask Mr. Hershey—is he still in the audience? I have a question, Mr. Hershey, if you would come forward, please, sir, that I should have asked.

STATEMENT OF J. W. HERSHEY—Resumed

Senator HOLLINGS. The Department of Transportation, on February 20, 1970, in a letter to the House Committee on Rules, listed several amounts and clarifications that it thought should be made legislation. Would you comment on the Department's letter for the hearing record? Are you familiar with that letter of February 20 that DOT sent over?

Mr. HERSHEY. No, but if you tell me what their suggestions were, I will be glad to comment on them.

Senator HOLLINGS. I think with the pressure of time here this morning I can see they are quite lengthy, so why don't we submit this to you and let you submit your answers at your convenience to the committee if you don't mind.

Mr. HERSHEY. I would be very happy to.

Senator HOLLINGS. You have a broad experience in the field, and we would appreciate very much your comments. The pertinent points are on pages 2 and 3 of the letter. They are quite lengthy. I will submit those to you, sir, and we would appreciate your answers to them.[1]

Mr. HERSHEY. That is the February 12 letter?

Senator HOLLINGS. February 20.

Mr. HERSHEY. Thank you, sir.

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

The next witness is Mr. William G. Stockton on behalf of the National Industrial Traffic League.

You may proceed, Mr. Stockton.

STATEMENT OF WILLIAM G. STOCKTON, ON BEHALF OF NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. STOCKTON. Thank you, sir.

My name is William G. Stockton. I appear here today in behalf of the National Industrial Traffic League in my capacity as chairman of its inland waterways committee, and as a member of its executive committee. I am also vice-president-traffic of Peabody Coal Co., St. Louis, Mo.

[1] See p. 113 for the information requested.

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, and chambers of commerce. The members of the National Industrial Traffic League are located throughout the United States; they are enterprises—large, medium, and small—and they use all modes of transportation, inland waterway, land, sea, and air. These people and companies are shippers and consumers of merchandise and commodities from farm to market, mine to mill and factory, and factory to market. In short, gentlemen, our members make up a very large segment of the shipping and consuming public of the United States.

For more than 60 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 of the league 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.

The legislative proposal here under discussion is quoted in the text of this statement which I will not go into since it is well known to the committee.

The subcommittee is here considering H.R. 8298 which passed the House of Representatives on August 12, 1970. This bill seeks to amend section 303(b) of the Interstate Commerce Act.

The language of section 303(b) which is quoted in my statement I will not read at this point.

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.

H.R. 8298 as originally presented in the House of Representatives was quite compatible with that policy in that it sought to eliminate the "three commodity" mixing restriction and the June 1, 1939, restriction defining what is a bulk commodity. The league testified in support of that bill before the House committee in hearing on May 21, 1969.

Following the hearing the bill was amended in committee by restoring the original language of section 303(b), thus nullifying the original H.R. 8298. It was further amended by the addition of a requirement to file minimum rates on bulk commodities under section 306 of the act which has not been required heretofore.

Thus, instead of achieving less regulation, as was originally intended under H.R. 8298, more regulation of the water carrier industry has resulted in the amended H.R. 8298 which is here under consideration today. I might add that all amendments occurred after the hearings and no further opportunity to be heard was afforded the interested parties.

The league policy clearly supports retention of the bulk commodity exemptions found in section 303(b). This can still be accomplished by striking the last four words of line 6 and all of lines 7, 8, and 9 on page 1 of the bill. Such action on the part of this committee will have the effect of preserving, not destroying, competition in the movement of dry bulk commodities on the Nation's inland waterways. It will contribute to the maintenance of an efficient and economical water transport system which is vital to the needs of the shipping public of the United States.

CONCLUSION

The league therefore strongly urges the committee to delete the portions of page 1 referred to above in the public interest. If this cannot be done then it is the position of the league that no bill should be passed and section 303(b) be allowed to remain as it presently exists.

May I thank the chairman and the members of this subcommittee for the opportunity to present these views in behalf of the National Industrial Traffic League.

Senator HOLLINGS. Thank you very much, Mr. Stockton.

Your entire statement will be included in the record. We appreciate very much your appearance this morning.

(The statement follows:)

STATEMENT OF WILLIAM G. STOCKTON IN BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE, WASHINGTON, D.C.

Mr. Chairman, members of the subcommittee, my name is William G. Stockton. I appear here today in behalf of The National Industrial Traffic League in my capacity as Chairman of its Inland Waterways Committee, and as a member of its Executive Committee. I am also Vice President-Traffic of Peabody Coal Company, St. Louis, Missouri.

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 and chambers of commerce. The members of The National Industrial Traffic League are located throughout the United States; they are enterprises—large, medium and small, and they use all modes of transportation, inland waterway, land, sea and air. These people and companies are *shippers and consumers* of merchandise and commodities from farm to market, mine to mill and factory, and factory to market. In short, Gentlemen, our members make up a very large segment of the shipping and consuming public of the United States.

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.

LEGISLATIVE PROPOSAL HERE UNDER DISCUSSION

The Subcommittee is here considering H.R. 8298 which passed the House of Representatives on August 12, 1970. This bill seeks to amend 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."

The National Industrial Traffic League has for many years had a very clear-cut policy on the matter 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."

H.R. 8298 as originally presented in the House of Representatives was quite compatible with that policy in that it sought to eliminate the "three commodity" mixing restriction and the June 1, 1939 restriction defining what *is* a bulk commodity. The league testified in support of that bill before the House Committee in hearing on May 21, 1969.

Following the hearing the bill was amended in committee by restoring the original language of Section 303(b), thus nullifying the original H.R. 8298. It was further amended by the addition of a requirement to file minimum rates on bulk commodities under Section 306 of the Act which has not been required heretofore.

Thus, instead of achieving less regulation, as was originally intended under H.R. 8298, more regulation of the water carrier industry has resulted in the amended H.R. 8298 which is here under consideration today. I might add that all amendments occurred after the hearings and no further opportunity to be heard was afforded the interested parties.

The League policy clearly supports retention of the bulk commodity exemptions found in Section 303(b). This could be accomplished by striking the last four words of line 6 and all of lines 7, 8, and 9 on page 1 of the bill. Such action on the part of this Committee will have the effect of preserving, not destroying, competition in the movement of dry bulk commodities on the Nation's inland waterways. It will contribute to the mainteance of an efficient and *economical* water transport system which is vital to the neeeds of the shipping public of the United States.

CONCLUSION

The League therefore strongly urges the Committee to delete the portions of page 1 referred to above in the public interest. If this cannot be done then it is the position of the League that no bill should be passed and Section 303(b) be allowed to remain as it presently exists.

May I thank the Chairman and the members of this Subcommittee for the opportunity to present these views in behalf of The National Industrial Traffic League.

Senator HOLLINGS. Mr. Gresham Hougland. Mr. Hougland, will you come forward, please? For the American Waterways Operators, Inc.

We appreciate your appearance.

STATEMENT OF GRESHAM HOUGLAND, ON BEHALF OF THE AMERICAN WATERWAYS OPERATORS, INC.

Mr. HOUGLAND. Mr. Chairman, my qualifications and a statement of the scope of the activities of the American Waterways Operators are contained in my statement which has been filed for the record, and with your permission I will allow it to speak for itself, while I will discuss with you somewhat informally what seems to be attracting the most attention here this morning of the subcommittee.

First may I say the American Waterways Operators are fully aware of the dilemma the regulated carriers by barge find themselves in. We understand why it is they wish to mix the commodities in their tows. We believe they should be allowed to do this, and we support their efforts to accomplish this on their own behalf.

We are opposed, however, to the provisions of H.R. 8298 which would require the filing of rates on exempt dry bulk commodities and which would require a report by the Interstate Commerce Commission within 2 years' time and give the ICC the authority to require the filing of information for the report by the exempt carriers.

Senator HOLLINGS. Why would you want to keep that information and those rates secret—trying the Hershey approach one more time?

Mr. HOUGLAND. Yes, sir. I was about to get to that. We believe that secrecy—and this is in quotes—in ratemaking is not sinister or unethical. It is simply the time-honored practice of a supplier and a consumer arriving at an agreed price.

The rates produced by "secret" negotiations are the product of hard bargaining at arm's length. The low level of the rates for water transportation of dry bulk commodities reflects the vigorous price competition among numerous water carriers seeking the transportation of various movements of such commodities.

This price competition will be eliminated if water carriers are required to establish, file, and publish their dry bulk rates.

The publication will establish a pricelist which will become uniform throughout the industry. Uniformity of price restrains competition, stabilizes prices at levels above where they would otherwise be.

Senator HOLLINGS. Proceed now, if you don't mind, to complete your comments. I didn't want to interrupt you.

Mr. HOUGLAND. That's perfectly all right.

I will say that it seems to me that there are three alternatives open now to this subcommittee and to the Senate.

First, you could permit H.R. 8298 to become law in its present form. This would solve the problem of mixing of exempt and regulated commodities, but it would create a problem of requiring the publication and filing of rates on the part of the exempt carriers, and in my opinion this problem is far greater from an economic standpoint than the first one.

Your second alternative would be to amend H.R. 8298 so that it would deal directly and only with the mixing rule problem and leave out the problem of the filing of rates on the exempt dry bulk commodities.

This could be done in the way Mr. Stockton has suggested, or the bill could be amended to then take the form of the S. 1314 which accomplished the same thing.

I don't know whether there is time in the waning days of this Con-

gress for this to occur or not. But if there is time, it would be entirely satisfactory to the American Waterways Operators to have it done this way.

Finally, the only other alternative is simply to do nothing with this bill, to allow it to die, and in the next Congress take up this whole matter in an atmosphere which would provide a time span to allow all segments of the transportation industry to give it the consideration it deserves in all of its aspects.

This is my statement, sir.

Senator HOLLINGS. Mr. Hougland, do you have any comment, with all these alternatives, about Congressman Nelsen's amendment?

Mr. HOUGLAND. I'm familiar with the Nelsen amendment. The Nelsen amendment would have been satisfactory to us if it could have been adopted. It was not. I don't know whether the Senator will consider the Nelsen amendment or not.

American Waterways Operators would support the bill if it were to come forth in this form.

Senator HOLLINGS. Would your position be changed if the carriers were allowed to file an entire contract instead of the tariff?

Mr. HOUGLAND. It would be impossible to file a tariff which would state the provisions of a long-term contract in the form required by H.R. 8298.

This is so because any long-term contract has certain items of retroactivity which cannot be known 30 days in advance as H.R. 8298 would require.

For example, there are rate adjustment cluases which are based on certain indexes. The wholesale commodity price index, for example. The final of this index is not known for 30 to 45 to 60 days after a given date, that being the date upon which it would be applied to determine what the rate would be.

Therefore, the rate itself could not be known until long after the service had been performed to which the rate would apply.

There are other provisions of long-term contracts which would be misleading if reduced to tariff form.

It is quite possible that one carrier might be moving a commodity for one shipper from one point to another point at different rates at the same time under contracts which were negotiated at different times.

So in the case of long-term contracts I do not believe the filing of a tariff as required by this bill could actually be done in a meaningful way.

Senator HOLLINGS. Thank you, Mr. Hougland. I am going to make your entire statement, of course, part of the record and ask also that the Department of Transportation letter of February 20 with certain amendments to the proposed legislation—I will submit that letter to you also if you don't mind and get your comments.[1]

Mr. HOUGLAND. I will be glad to do it. Thank you very much.

(The statement follows:)

STATEMENT OF GRESHAM HOUGLAND, ON BEHALF OF THE AMERICAN WATERWAYS OPERATORS, INC.

My name is Gresham Hougland. I appear before the Subcommittee on behalf of The American Waterways Operators, Inc., to offer the views of the members of that Association concerning H.R. 8298, the so-called water carrier mixing rule bill.

[1] See p. 113 for the information requested.

The American Waterways Operators, Inc., (AWO) is a trade association representing the national interests of operators of towboats, tugboats and barges who provide transport services and ship berthing and other harbor work on the navigable waters of the United States. Our members operate vessels on the inland waterways and over coastal and seagoing routes in all areas of the country. In addition to such vessel operators, AWO also represents shipyards who build and repair the type of equipment operated by our carrier members, terminal operators who serve water carriers, and certain service companies. AWO has 213 members, of which 119 operate towing vessels and barges in transportation service.

I am a director of AWO, member of its Legislative Committee, and former Chairman of the Board of the Association. My positions with AWO are voluntary as a member of the Association. I am executive vice president of the Crounse Corporation and Southern Barge Line Corporation, both with headquarters in Paducah, Kentucky. Crounse Corporation owns and operates a fleet of 18 towboats and 248 dry cargo barges. Crounse has 52 dry cargo barges on order for delivery later this year as additions to its fleet. Crounse Corporation engages in the transportation of dry bulk commodities under the exemptions of Section 303(b) of the Interstate Commerce Act. Such operations are conducted on the Mississippi, Ohio, Tennessee, Kanawha, and Green Rivers. Southern Barge Line Corporation holds certificate W–26 issued by the Interstate Commerce Commission in July 1943 to serve as a common carrier by water transporting commodities generally on the Tennessee and Ohio Rivers between Guntersville, Alabama and Cairo, Illinois.

The Board of Directors of The American Waterways Operators, Inc., which is made up of executives of the barge and towing industry and other interests from throughout the United States, has directed that the Association appear before this Subcommittee to testify on H.R. 8298. I appear in response to the Board's directive in this respect.

H.R. 8298 is not a solution to the so-called water carrier mixing rule problem. The proper solution to the problem created by the interpretive ruling of the Interstate Commerce Commission in its WC–5 proceeding is simple: water carriers holding certificates or permits issued by the ICC should be authorized by the Congress to transport mixed cargos. The legislation under consideration should do nothing more, nor less than this. This objective would be achieved by enactment of the amended version of H.R. 8298 attached to this statement.

H.R. 8298, as passed by the House, is principally regulatory legislation rather than a solution to the mixing rule problem for about 12 to 15 of the ICC-licensed water carriers.

The bill, as the result of provisions inserted by the House Subcommittee on Transportation and Aeronautics without hearings, has become essentially a punitive measure aimed at some 600 water carriers presently engaged in providing the shipping public with low cost, competitive transportation in the movement of bulk commodities on this nation's rivers and waterways. Without hearings on the issue, but with the wholehearted endorsement of the railroad industry and the presently regulated water carriers, the House has created a legislative monstrosity designed to extend substantial burdens of ICC regulation to more than 600 presently exempt water carriers. Such carriers have *never* been subject to ICC economic regulation, and the wisdom of Congress' decision to exempt their operations from regulation upon original enactment of Part III of the Interstate Commerce Act in 1940 has been thoroughly vindicated since that time by the low cost, competitive transportation service afforded to the public in the movement of grain, coal, sand, gravel, aggregates, dry fertilizers, and other dry bulk commodities.

H.R. 8298 would offer shippers, receivers, and ultimate consumers of dry bulk commodities, in replacement for the benefits of competitive pricing they have historically enjoyed, the supposed benefits of fully disclosed price lists filed with and regulated by the ICC. Day-to-day business dealings, as well as antitrust policy and enforcement, teach us that the publication of price lists and the exchange of price information will guarantee restraint of competition and the stabilization of prices at a uniform level far above what they would otherwise reach. The united opposition of shippers and consumers of dry bulk commodities against H.R. 8298 reflects the accuracy of this forecast. On the other hand, supporters of the bill include rail and water carriers who stand to benefit from an increase in rates for the movement of commodities for which their presently published rates, duly filed with the ICC, preclude them from competing, and shippers whose products move at rates already regulated by the ICC.

H.R. 8298 presents a clear choice. It deserves unstinting support from all who desire to insure increased transportation charges applied to grain and grain products for human and animal consumption; coal used as energy fuel; sand, gravel, and aggregates used in the construction industry; and dry fertilizers used throughout the agriculture industry. For those opposed to these consequences and their overall inflationary impact, the logical choice is support of the amended version of H.R. 8298 suggested by AWO. (See attachment, "History of the Water Carrier Mixing Rule Problem.")

This concludes my oral testimony before the Committee. AWO appreciates having been offered an opportunity to express its views and respectfully requests inclusion in the record of the remaining portion of its written presentation outlining in more detail its position on H.R. 8298 and including as attachment 2 a brief history of the mixing rule problem.

Part III of the Interstate Commerce Act generally provides that domestic, for-hire water transportation may not be performed unless a carrier holds a certificate of permit issued by the Interstate Commerce Commission. Approximately 113 carriers presently hold certificates to operate as common carriers by water and approximately 32 hold permits to operate as contract carriers by water. Water carrier certificates and permits define the geographical scope of the carriers' operations, and most often authorize the holder to transport all commodities or all commodities with minor exceptions.

For-hire transportation of dry bulk commodities is a major exception to the economic regulatory scheme of Part III of the Act. When Congress originally enacted Part III, it exempted from ICC licensing and all other regulatory requirements "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." Dry bulk commodities, as further defined in section 303(b), are confined to those commodities which are now and which were in accordance with the existing custom of the trade as of June 1, 1939 "loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count." Corn and other grains dumped into a vessel, coal, sand, gravel, dry fertilizers, are commodities in bulk. Iron and steel products, grain in bags, machinery clearly are not. Sugar, bagged or in bulk, has been held not to be a commodity in bulk because it was not transported in bulk form prior to June 1, 1939.

The section 303(b) exemption, since its enactment in 1940 has permitted the continued growth of a class of water carriers, completely separate and distinct from the relatively small group of carriers holding certificates or permits issued by the ICC. This so-called exempt group presently includes more than 600 water carriers engaged wholly in transporting bulk commodities under the strict exemption requirements of sections 303(b) and (d). Many of these carriers are members of AWO.

The more than 600 carriers operating exclusively under the section 303 exemptions and holding no certificates or permits issued by the ICC obviously cannot and do not transport commodities falling outside the definition of bulk commodities set forth in that section. However, ICC-licensed carriers may—and some few do—transport dry bulk commodities. Since "mixing" by definition is the concurrent transportation in the same vessel of commodities falling within the setcion 303(b) exemption with commodities which do not, the so-called mixing rule "problem" must clearly be—and is in its natural form—a problem encountered by that segment of ICC-licensed carriers who in fact mix.

Unfortunately, the House Subcommittee on Transportation and Aeronautics, without adequate hearings, so fundamentally changed the original version of H.R. 8298 that a potential solution to the basic mixing rule problem was transformed into a "problem" for more than 600 exempt carriers who cannot mix. H.R. 8298, as passed by the House and endorsed by a few ICC-licensed water carriers and the railroad industry, has been converted into a punitive measure aimed at the more than 600 carriers that now provide the American consuming public with low-cost water carriage of dry bulk commodities.

From the time of enactment of Part III of the Interstate Commerce Act in 1940, ICC-licensed water carriers have transported regulated commodities and dry bulk commodities concurrently and in the same vessel. In other words, they mixed. In 1967, the Interstate Commerce Commission, in its WC–5 interpretive ruling as upheld by the United States Supreme Court, found that the Act does

not permit licensed carriers to transport regulated commodities concurrently and in the same vessel with dry bulk commodities unless the dry bulk commodities are treated as regulated commodities. This decision required, among other things, that licensed carriers performing mixed transportation have rates on file with the ICC covering transportation of dry bulk commodities. ICC-licensed carriers believed that this decision would prevent them from realizing economy in operations that could be achieved by mixed operations. The ICC-licensed carriers, therefore, want the statute amended so as to nullify the ICC decision regulating mixed tows. This is the basic problem for which a solution was originally sought from the Congress.

The obvious solution was restoration of the full flexibility in water carrier service on which the shipping and receiving public had come to rely during the period prior to the ICC's WC–5 order. In 1967, all major water transport interests, carriers and shippers, joined in petitioning the Congress and this Committee to restore the status quo ante the ICC's WC–5 order. Licensed carriers joined in the water transport industry's united front. The largest of the ICC-licensed carriers vigorously advocated the original objective of mixing rule legislation before this Committee in support of S. 1314 (90th Congress). That presentation appears at pages 10 through 46 of the transcript of hearings on S. 1314 (Senate Commerce Committee document Serial No. 90–21—90th Congress, First Session).

That carrier now supports H.R. 8298, which is a far different matter. H.R. 8298 would permit licensed carriers to mix regulated commodities and exempt dry bulk commodities. In order for regulated carriers to do so they would be required to file rates with the Interstate Commerce Commission on the dry bulk commodities. So far, so good. Mixing is permitted. But H.R. 8298 goes on to require water carriers who carry *only* dry bulk commodities and who are otherwise totally exempt from ICC economic regulation also to file rates on dry bulk commodities, which obviously would be moving under the exemption conditions prescribed by section 303(b). A new and punitive form of regulations would thus be imposed upon approximately 640 carriers not directly affected by the WC–5 order and having no direct concern with solution of the problem the order created.

H.R. 8298 continues further beyond solution of the licensed carriers' mixing problem to impose another onerous burden on water carriers operating exclusively under the dry bulk exemptions of section 303(b). The ICC would be authorized by H.R. 8298 to "require water carriers operating under the exemption contained in section 303(b) of the Interstate Commerce Act to file such reports containing such information as the Commission may prescribe." This in order to permit the ICC to report on the effect of requiring such carriers to file rates.

Initially, Congress was asked to preserve the status quo with respect to barge transportation as it existed prior to the ICC's no-mixing order, thereby permitting exempt operations to be continued by those dry cargo carriers operating under fully exempt status and by regulated common carriers with respect to their carriage of dry bulk commodities. In effect the Congress was petitioned to preserve the exemptions under which barge transportation has prospered and grown in service to shippers and in utilization of the inland channels which the Congress has improved for transport purposes at public expense. This was what was sought by water carriers, and shippers using water transportation.

What we are faced with in H.R. 8298 is an *extension* of regulation to a majority of water carriers and affecting a majority of waterborne commerce. Such proposed regulation serves no purpose in the public interest. It will not promote use of water carrier services by shippers. Shippers do not want such extension of regulation. The overwhelming majority of carriers do not want it.

Regulated water transportation accounts for approximately 12.6 percent of total domestic service. Non-regulated water transportation accounts for approximately 87.4 percent of domestic service. Seventeen hundred companies engage in water transportation in the United States. Approximately 145 hold certificates or permits from the Interstate Commerce Commission. Approximately 300 are private carriers performing proprietary transportation. The rest are exempt carriers. Many of the exempt carriers, perhaps the majority of them, engage primarily in the movement of liquid commodities. But the liquid carriers from time to time transport dry bulk commodities and under the terms of H.R. 8298 would be effected by its regulatory provisions when they transport such dry bulk commodities.

In the confusion which has surrounded H.R. 8298 since it was reported out of the House Subcommittee on Transportation and Aeronautics without hearings on the rate filing provisions, many conflicting views have been expressed with respect to what the bill does and how it does whatever is done. It has been alleged

that H.R. 8298 does not extend regulation to either carriers or commodities. Rate regulation is the heart of economic regulation and H.R. 8298 provides for rate regulation with respect to a class of carriers and a class of commodities which are not currently subject to regulation under the Interstate Commerce Act. To argue that this is not regulation—and an extension of regulation by the ICC—is simply to refuse to admit the facts.

What kind of regulation is it?

Certain proponents of the rate filing provision contend that the requirement is for minimum rates. This is simply not true. H.R. 8298 compels compliance by all water carriers with the provisions of section 306 of the Interstate Commerce Act requiring common carriers by water to file tariffs and observe the rates stated therein, and requiring contract carriers by water to establish and observe reasonable minimum rates and charges. The bill also explicitly provides that any violation or failure to comply with section 306 or "any rule, regulation, requirement or order thereunder" shall be subject to "the provisions of sections 316 and 317" of the Interstate Commerce Act. Section 316(b) permits the ICC or the Justice Department to apply to a federal district court for enforcement of section 306 by "writs of injunction or other process." Under section 317(a) knowing or willful violation of section 306 is declared to be a misdemeanor, conviction for which is punishable by a fine not exceeding $500 for each offense. "Each day of such violation shall constitute a separate offense." Under sections 317(b) water carriers, their officers, agents, employees and representatives could be fined up to $5,000 for each offense wherein they "knowingly and willfully assist . . . or permit, any person to obtain transportation . . . at less than the rates, fares, or charges lawfully in effect." The latter conduct is specifically proscribed by sections 306(c) and (e) of the Act.

Under provisions of H.R. 8298, approximately 640 carriers would be required to file rates for the first time and would not be afforded the privilege of filing rates through a bureau or through a common agent. Each of these companies individually would have to file their rates with the Interstate Commerce Commission. They are not afforded the protection of the Reed-Bulwinkle Act under provisions of which carriers presently subject to the regulatory provisions of Parts I, II, and III of the Interstate Commerce Act are permitted to form rate bureaus through which rates may be filed with the ICC. The Reed-Bulwinkle Act provides protection from the antitrust statutes to permit carriers to file rates through bureaus or common agents in order to lessen the burden on individual companies. As an indication of the confusion surrounding H.R. 8298, one of the proponents of the rate filing provisions has argued that protection of the Reed-Bulwinkle Act is implied and therefore can be relied on. Such protection cannot be implied. It must be specifically provided. It *is not* provided for those presently exempt carriers who would be required to file rates. It *is* provided for presently licensed water carriers. An inequity would therefore be created within the water carrier industry and between certain water carriers and railroads and motor carriers, with the inequity operating as a discrimination against presently exempt water carriers who for the first time would be required to file rates.

Proponents of the rate filing provisions of H.R. 8298 argue that such provisions are desirable in order to do away with so-called secret ratemaking by water carriers who are exempt from ICC control. The cry over "secret" rates implies something sinister and unethical about the familiar business practice of consumer and supplier negotiating an agreed price for supplying goods or rendering a service. The rates attacked as "secret" are in fact the product of competitive arms-length negotiations between the user and potential providers of transportation services. The reasonably low level of rates for water transportation of dry bulk commodities reflects the vigor of price competition among numerous water carriers seeking to transport various movements of such commodities.

H.R. 8298 would eliminate such competitively negotiated rates by requiring for the first time that water carriers establish, file and publish, subject to change only upon 30 days notice, rates for the transportation of dry bulk commodities. It has been suggested this provision will keep rates low and encourage competition. The consequences of H.R. 8298 will be directly contrary to these suggestions.

Day-to-day business dealings, as well as antitrust policy and enforcement, teach us that the publication of price lists leads readily to uniform prices within an industry. As stated by the Supreme Court in a 1969 decision "knowledge of a competitor's price usually [means] matching that price." Uniformity of price throughout an industry restrains, rather than enhances competition, and stabilizes prices at levels above what they would otherwise reach. It is wholly unreasonable to exepect any different result if water carriers lose their freedom to

negotiate flexible competitive rates for the movement of dry bulk commodities. The conclusion recently expressed by the Supreme Court about the corrugated container industry is an accurate prophecy of what shippers of dry bulk commodities will face if disclosure of rates on those commodities is required: "the inferences are irresistible that the exchange of price information has had an anticompetitive effect in the industry, chilling the vigor of price competition."

It has been argued that the rate filing provisions in H.R. 8298 are not intended to change the exemption under section 303(b) of the Interstate Commerce Act which provides for the carriage of dry bulk commodities without ICC regulation. The argument advanced is that the intention is not to regulate, but to study the operations of exempt water carriers. In order to make the study, rates would have to be filed by such carriers and the ICC could require such reports as desired.

If the intention is only to provide a method to study operations by water carriers under the exemptions provided in section 303(b), rates filed by such carriers under the provisions of H.R. 8298 will not provide the reliable data needed, simply because the filing carriers would no longer be operating under exempt conditions. Rates filed for the purpose of making such a study would be meaningless and/or misleading and would give an erroneous impression of operations as they currently exist. The conditions permitting the low-priced transportation now afforded to the public would no longer exist. Many carriers operating under the exemption provisions of section 303(b) operate under long-term contracts which incorporate many variables which influence the final charge for the service. Many such contracts take into consideration river conditions which vary from time to time on an individual waterway and which vary from waterway to waterway. Under normal river conditions a standard base rate may prevail. This standard rate may go down under ideal operating conditions; or it may go up under adverse operating conditions. In many cases charges for transportation under such contracts may not be finally ascertained until some time after the services are performed. Such flexible pricing would no longer be possible under filed rates requiring 30-days' advance notice to change.

At a time when there is widespread dissatisfaction with the performance of the Interstate Commerce Commission's exercise of its existing regulatory authority over rail, motor, and water carriers now subject to the Interstate Commerce Act, it would seem highly ill-advised to bring that segment of domestic water transportation which is now unregulated under any form of regulation by the ICC. The non-regulated portion of domestic water transportation has provided the competition within the water carrier industry and between water carriers and railroads which has held the rates low for water carriage and in some instances for rail carriage. The non-regulated portion of the water carrier industry, by keeping the rates low, has been the principal factor in attracting the majority of commerce that now moves by water in the United States, thereby providing the returns on the public's investment in the improvement of navigation channels.

In an era when we are beset by almost insurmountable financial and operating problems in many sectors of transportation, this is no time to tamper with the water carrier industry in such fashion as H.R. 8298 would tamper with it.

The American Waterways Operators, Inc., urges this committee to consider the original objective with respect to the water carrier mixing rule problem and no other objective. The status quo with respect to water transportation, the status quo as it existed to the ICC's no mixing order, can be achieved by amending H.R. 8298 to strike the rate filing provisions in Section 1 and the investigative-report provisions incorporated in Sections 2 and 3 which would be rendered moot if the rate filing provisions were eliminated.

AWO urges the Committee's favorable consideration of the amendments reflected in the marked up copy of H.R. 8298 attached hereto. The amendments we suggest will provide a fair and equitable solution to the barge mixing problem. The amendments will preserve the status quo with respect to the vigorous water carrier competition which exists today. They will serve the best interests of users of water transportation. They will preserve the opportunity for communities along the river to continue to profit from low-cost barge transportation. A bill in the form suggested by AWO is clearly in the best interests of the public at large.

The following contains a brief history of the mixing rule problem.

This copy of H.R. 8298 is amended, by striking through certain provisions, to remove the rate filing requirements and related provisions. Thusly amended, the measure will solve the water carrier mixing rule problem satisfactorily for shippers and barge line operators. The amendments are recommended to the Senate by interested organizations, companies and persons.

91ST CONGRESS
2D SESSION

H. R. 8298

IN THE SENATE OF THE UNITED STATES

AUGUST 13, 1970

Read twice and referred to the Committee on Commerce

AN ACT

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 to read as follows:

"(b) Nothing in this part, ~~except the provisions of section 306 and, in case of any violation thereof or of any rule, regulation, requirement or order thereunder, or of failure to comply therewith, the provisions of sections 316 and 317,~~ shall apply to the transportation by a water carrier of com-

modities 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. The transportation, subject to the provisions of this part, of commodities not in bulk, or commodities in bulk at rates lawfully filed and subject to the provisions of section 307, 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. 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. ~~The provisions of this subsection are not intended to alter existing law, as in effect on the day before the date of enactment of this sentence, with respect to water carriers operating solely within a harbor or within the Great Lakes.~~"

SEC. 2. The amendment made by the first section of this Act shall expire at the end of the two-year period beginning on the date of its enactment. Not less than ninety days before the expiration of such two-year period the Interstate Commerce Commission shall report to the Congress on the effects of such amendment on transportation operations under section 303 (b) of the Interstate Commerce Act.

SEC. 3. In carrying out its functions under section 2 of this Act, the Interstate Commerce Commission may require water carriers operating under the exemption contained in section 303 (b) of the Interstate Commerce Act to file such reports containing such information as the Commission may prescribe.

Passed the House of Representatives August 12, 1970.

Attest: W. PAT JENNINGS,
Clerk.

HISTORY OF THE WATER CARRIER MIXING RULE PROBLEM

The Interstate Commerce Act in Part III provides for economic regulation of certain domestic water carrier operations and affirmatively exempts other types of water carrier operations. Regulated water carriers holding certificates of convenience and necessity from the Interstate Commerce Commission to transport the regulated commodities, i.e., those subject to mark and count or delivered in containers or wrappers, can and do transport commodities affirmatively exempted from regulation, i.e., dry bulk commodities such as grain, coal, and fertilizers. Carriers who do not hold certificates from the Interstate Commerce Commission and who operate under the specific exemption of the Interstate Commerce Act can transport only the exempted dry bulk commodities and liquid commodities, which are also exempted from regulation when they move in bulk in tank vessels.

The transportation by certificated regular route common carriers of dry bulk commodities in concert with regulated commodities is what created the barge mixing problem. Historically such regulated carriers "mixed" and transported simultaneously their regulated commodities and their exempted dry bulk commodities. The Interstate Commerce Commission in a proceeding designated as WC–5 arising in 1955, found in 1960 that when a certificated regular route common carrier transported dry bulk commodities at the same time (in the same tow of vessels) that dry bulk exempted commodities were also transported, that

rates would have to be filed on the dry bulk commodities. The ICC also ruled that any movement by an exempt carrier of such dry bulk commodities which were subsequently to be transported in a "mixed" tow subjected the exempt carrier's portion of the movement to regulation. The order of the Commission was upheld by the Supreme Court in March 1967. The time taken by the Commission and the courts to resolve this matter indicates its complexity.

The effect of the ICC's WC–5 order was to upset the ability of certificated carriers to utilize fully technological developments which have created greater efficiency and economies in barge transportation. The decision also had an adverse effect on certain exempt carriers who move exempt commodities in feeder hauls where such commodities are subsequently going to be transported by a certificated carrier along with his regulated commodities.

The District Court in affirming the ICC decision in the WC–5 proceeding said: "If, as argued so strenuously, this application of Sec. 303(b) brings about transportation inefficiencies . . . the remedy is to be in Congress. . . . If Congressional handiwork now produces unwanted results it is for Congress, not the Judiciary, to right the machinery." It was in response to this directive from the Court that a coalition of interests representing shippers and water carriers went before the Congress in 1967 seeking a solution to the problem.

It was first laid before the Congress in a bill (S. 1314) introduced by Senator Warren G. Magnuson (for himself and Senator Vance Hartke) in March 1967. The Senate Subcommittee on Surface Transportation held hearings and ordered the bill favorably reported in September 1967. The Senate never took up the bill and it died with the adjournment of the 90th Congress.

Identical bills were introduced in the House in 1967. Hearings were held, but no further action was taken in the House in the 90th Congress.

Proposed legislation identical to S. 1314 and the bills that were introduced in the House in the 90th Congress were introduced in the First Session of the 91st Congress in 1969 by Representatives Dan H. Kuykendall, Hale Boggs, Bob Eckhardt, Ray Blanton, and Peter N. Kyros. H.R. 8298 became the leading bill. Hearings were held in May 1969.

H.R. 8298 in its original form would have legislatively repealed the ICC's WC–5 decision and permitted the concurrent transportation by certificated regular route common carriers of regulated commodities and dry bulk exempted commodities without any change in the status of the exemptions with respect to the dry bulk commodities. H.R. 8298 further would have authorized the transportation of any number of dry bulk commodities as exempted commodities by repealing the provision of the Interstate Commerce Act which now limits such transportation to three dry bulk commodities. H.R. 8298 would have also repealed the so-called "custom-of-the-trade date" of June 1, 1939 which defines which dry bulk commodities are entitled to move as exempt commodities. (Such commodities under the law now must have moved in bulk prior to June 1, 1939.)

The railroads in 1967 and in 1969 opposed the proposed legislation, primarily on the grounds that the provisions to permit transportation at the same time of any number of dry bulk commodities (rather than limiting transportation to three such commodities) and the repeal of the "custom-of-the-trade date" broadened the water carrier exemptions.

The House Subcommittee on Transportation and Aeronautics in June 1969, in a move to compromise the railroads' opposition, in executive session amended H.R. 8298. The amendments added a provision that all carriers, both regulated carriers and exempted carriers, must file rates with the ICC on all dry bulk commodities. The amendments further provided (1) that certificated common carriers could transport regulated commodities and dry bulk commodities provided all carriers (both the regulated common carriers and the exempted dry bulk carriers) filed rates with the ICC on all dry bulk commodities; (2) that the amendment to permit mixing and to require the filing of rates would expire at the end of two years; (3) that the Interstate Commerce Commission would report to the Congress on the effect of such amendments on transportation operations by carriers operating under Section 303(b) of the Interstate Commerce Act; and (4) that ICC could require water carriers operating under the exemption contained in Section 303(b) to file such reports containing such information as the Commission might prescribe.

The railroads and a small group of certificated regular route common carriers by water accepted and supported H.R. 8298 as amended.

The majority of the water carrier industry (of 1,700 companies who perform barge transportation in the United States only about 113 are certificated common carriers and they perform only a small percentage of total transportation

as regulated service) opposed the rate filing requirement and attendant provisions. Shippers had supported the original legislation in concert with the entire barge line industry, but they too opposed H.R. 8298 as amended by the House Subcommittee. Only two consumer groups supported the amended bill. These were the Southern Paper Manufacturers Traffic Conference and the American Scrap Iron Association. Interestingly enough, these two associations represent companies whose products all must move as regulated commodities by water.

Senator HOLLINGS. We will hear next from Mr. Donald Graham, the assistant general counsel of the National Council of Farmer Cooperatives.

I understand you are accompanied by Mr. Anthony J. Skul, transportation manager of CF Industries.

Both of you are welcome. We will be glad to hear from you at this time.

STATEMENT OF DONALD E. GRAHAM, ASSISTANT GENERAL COUNSEL, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. GRAHAM. Thank you, Senator. We appreciate the opportunity to appear here in opposition to H.R. 8298.

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 is opposed to H.R. 8298.

We supported the original bill as introduced in the House of Representatives, but we are adamantly opposed to the bill in its present emasculated form.

The national council firmly believes that the regulation which would certainly come about with the filing of rates would increase the cost of transportation of agricultural commodities. Our view is supported by two analogous situations in which transportation of agricultural commodities were for a time regulated and then became exempt.

These studies were made by the U.S. Department of Agriculture and reported in "Marketing Research Report No. 224: Interstate Trucking of Fresh and Frozen Poultry Under Agricultural Exemption," and in "Marketing Research Report No. 316: Interstate Trucking of Frozen Fruits and Vegetables Under Agricultural Exemption."

In both the frozen poultry study, and the frozen fruits and vegetables study, when these commodities were subject to economic regulation and then determined to be exempt the report showed that service improved and transportation costs declined when these commodities were not subjected to economic regulation by the ICC.

In the USDA summary on the fresh and frozen poultry study the Department states:

> The interstate trucking of fresh and frozen poultry under the agricultural exemption clause has resulted in lower rates and, in the opinion of processors, improved service.
>
> Truck rates charges by carriers during 1956–57, when the exemption applied, were approximately 33 percent below the 1952 rates on fresh poultry and 36 percent below the 1955 rates on frozen poultry.

In its summary of the frozen fruits and vegetables study the Department states, in almost identical wording to the earlier study quoted above:

Since the interstate trucking of frozen fruits and vegetables came under the agricultural exemption in 1956, motor carrier rates have been reduced and, according to the processors, service has improved.

Motor carrier rates on frozen fruits and vegetabels declined 19 percent following the court decisions.

Which declared these commodities to be exempt.

There is no doubt in the mind of farmer cooperative management that if H.R. 8298 becomes law the cost of transporting agricultural commodities now moving under the exemption contained in section 303(b) of the Interstate Commerce Act will be increased.

In this time of rising costs and prices, it is very important to agriculture that the advantages of unregulated barge transportation be maintained. Should this committee require the filing of rates by unregulated carriers, rates will certainly be increased and many presently unregulated carriers will be put out of business causing a decline in service.

It is our firm belief that water carrier rates should be set by the forces of competition and not be artificially supported by rate publication. The farmers of this country need and are entitled to the economic advantages made possible by mixing which result in lower costs to the carriers as well as the benefits afforded by free competition in the barge industry.

The railroad industry has conclusively demonstrated year after year that it is unable to supply sufficient freight cars for the traffic they already have. There is not a farmer cooperative among our membership that has not suffered severe financial loss due to the inability of the railroad industry to provide an adequate supply of boxcars and reasonable service.

We believe that if H.R. 8298 is adopted in its present form, the published rates will become the minimum rates and will be set at such a high level as to provide an umbrella for not only the regulated water carrier industry, but also the railroads.

One of the most serious problems which the unregulated water carriers would be faced with if H.R. 8298 is adopted, is that they would not have the immunity from antitrust provided by section 5(a) of the Interstate Commerce Act. The rate filing provision of H.R. 8298 will impair the flexibility of barge transportation of bulk commodities. It will be expensive and benefit no one.

The question has been raised by some, and quite properly so, about "secret" rates. The question has been put in the context of: Don't "secret" rates hurt the small shipper and prefer the grain or other bulk shippers who can tender a larger volume to the carrier? Don't "secret" rates hurt competition in that you do not know the rates your competitor is receiving?

Water carrier rates on bulk commodities are probably lower to the large volume consignors than they are to the smaller shippers, and we suppose it is true that there is no way of being certain of the rates your competitor is being charged. But the publication of rates will not correct this evil if it be an evil, if it is bad.

There is absolutely nothing in H.R. 8298 nor in the Interstate Commerce Act that prevents a carrier from publishing reduced rates based on volume tendered by the shipper—to the contrary, the ICC has sanctioned five-car, 25-car, unit-train, rent-a-train, and guaranteed annual volume rates which are always lower than single-car rates be-

tween the same origins and destinations. Under regulation the large shipper is preferred today, and the rent-a-train rates are a prime example of a rate that is known only to the shipper and the carrier and then only after they have utilized the rent-a-train for a full year under the contract.

In the motor carrier field agricultural bulk commodities move primarily under the exemption from economic regulation contained in section 203(b)(6) of the Interstate Commerce Act. Here, too, the volume shipper can be preferred over the small or occasional shipper. The agricultural community prefers the exemption from economic regulation contained in section 203(b)(6) because we know it results in lower transportation costs as demonstrated in the two USDA studies mentioned earlier in this statement.

And I might add, Mr. Chairman, that this business of voluntary discounting is certainly permitted by the Robinson-Patman Act. We grew up with it. We could always get three packs of chewing gum for a dime or five cents a pack. A six-pack of beer sells less than for one bottle.

There is nothing new, there is nothing secret about it, and our membership tells us that they can find out a water rate any time on the river, and they do know what their competitors are paying. There is nothing secret about it. It's an arm's length, supply and demand, negotiated rate. And the word "secrecy" is ludicrous.

Senator HOLLINGS. The only secret we know of is what is going on down at the Interstate Commerce Commission. Senator Mansfield has recommended we abolish that group.

Mr. GRAHAM. Yes, sir. And I may add, if the unregulated water carriers have to join a club of publishing rates and fighting for their rates. It's a very expensive club they run down on Constitution Avenue. The cost of living really goes up when you fight for your rate proposal down there.

It is our position that no legislation whatever would be better than the bill before you.

But we do strongly support S. 1314 which was unanimously reported out of this committee. And we have heard the league's proposal this morning. We are not opposed to it. We just don't think it goes far enough.

So we certainly urge you to come back with S. 1314 which was unanimously reported out of this committee in the 90th Congress.

Senator HOLLINGS. Thank you very much.

(The statement follows:)

STATEMENT OF DONALD E. GRAHAM, ON BEHALF OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. Chairman and members of the subcommittee:

My name is Donald E. Graham. I am Assistant General Counsel of the National Council of Farmer Cooperatives, Washington, D.C. I appreciate the opportunity to appear here today on behalf of the National Council in opposition to H.R. 8298.

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 is opposed to H.R. 8298.

We submitted a statement to the House Committee on Interstate and Foreign Commerce in support of H.R. 8298 in the form in which it was originally introduced in the House of Representatives. However, we are adamantly opposed to the bill in its present emasculated form. We urge you to approve a bill identical

to S. 1314 which was unanimously reported out of the Senate Committee on Commerce in the first session of the 90th Congress. That bill read as follows:

"Section 303(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 section 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. 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."

The Council's authority for support of a bill identical to S. 1314 quoted above 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 a full hearing was held on S. 1314 in the 90th Congress and most of the members of the present Committee also served on this Committee at the time these hearings were held we will not burden the record with another recitation of the water carrier mixing rule problem. We will confine this statement to the economic interest so important to many of our farmer cooperative members.

The bill which the House passed (H.R. 8298) is in nearly all respects contrary to S. 1314. The bill before you would, among other things, require the publication of rates on bulk commodities by the water carriers thirty (30) days in advance of performing the required transportation.

The National Council firmly believes that the regulation which would certainly come about with the filing of rates would increase the cost of transportation of agricultural commodities. Our view is supported by two analogous situations in which transportation of agricultural commodities were for a time regulated and then became exempt. These studies were made by the United States Department of Agriculture and reported in Marketing Research Report No. 224, Interstate Trucking of Fresh and Frozen Poultry under Agricultural Exemption, and in Marketing Research Report No. 316, Interstate Trucking of Frozen Fruits and Vegetables under Agricultural Exemption. In both the frozen poultry study, and the frozen fruits and vegetables study, when these commodities were subject to economic regulation and then determined to be exempt the report showed that service improved and transportation costs declined when these commodities were not subject to economic regulation by the ICC.

In the USDA Summary on the Fresh and Frozen Poultry study the Department states: "The interstate trucking of fresh and frozen poultry under the agricultural exemption clause has resulted in lower rates and, in the opinion of processors, improved service." [1]

* * * * * * *

"Truck rates charges by carriers during 1956–57 [when the exemption applied] were approximately 33 percent below the 1952 rates on fresh poultry and 36 percent below the 1955 rates on frozen poultry." [1] [When they were regulated.]

In its summary of the Frozen Fruits and Vegetables study the Department states (in almost identical wording to the earlier study quoted above): "Since the interstate trucking of frozen fruits and vegetables came under the agricultural exemption in 1956, motor carrier rates have been reduced and, according to the processors, service has improved." [2]

* * * * * * *

"Motor carrier rates on frozen fruits and vegetables declined 19 percent following the court decisions." [2] [Which declared these commodities to be exempt.]

There is no doubt in the mind of farmer cooperative management that if H.R. 8298 becomes law the cost of transporting agricultural commodities now moving under the exemption contained in section 303(b) of the Interstate Commerce Act will be increased.

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[1] USDA Marketing Research Report No. 224, page 1.
[2] USDA Marketing Research Report No. 316, page 1.

In this time of rising costs and prices, it is very important to agriculture that the advantages of unregulated barge transportation be maintained. Should this committee require the filing of rates by unregulated carriers, rates will certainly be increased and many presently unregulated carriers will be put out of business causing a decline in service. It is our firm belief that water carrier rates should be set by the forces of competition, and not be artificially supported by rate publication. The farmers of this country need and are entitled to the economic advantages made possible by mixing which result in lower costs to the carriers as well as the benefits afforded by free competition in the barge industry.

The railroad industry has conclusively demonstrated year after year that it is unable to supply sufficient freight cars for the traffic they already have. There is not a farmer cooperative among our membership that has not suffered severe financial loss due to the inability of the railroad industry to provide an adequate supply of box cars and reasonable service.

We believe that if H.R. 8298 is adopted in its present form, the published rates will become the minimum rates and will be set at such a high level as to provide an umbrella for not only the regulated water carrier industry, but also the railroads.

One of the most serious problems which the unregulated water carriers would be faced with if H.R. 8298 is adopted is that they would not have the immunity from antitrust provided by section 5(a) of the Interstate Commerce Act. The rate filing provision of H.R. 8298 will impair the flexibility of barge transportation of bulk commodities, it will be expensive and benefit no one. It will harass the unregulated carriers and will not provide an economic advantage to the regulated barge industry nor to the intermodal competitors.

The question has been raised by some, and quite properly so, about "secret" rates. The question has been put in the context of: Don't "secret" rates hurt the small shipper and prefer the grain or other bulk shippers who can tender a larger volume to the carrier? Don't "secret" rates hurt competition in that you do not know the rates your competitor is receiving?

Water carrier rates on bulk commodities are probably lower to the large volume consignors than they are to the smaller shippers, and we suppose it is true that there is no way of being certain of the rates your competitor is being charged. But, the publication of rates will not correct this evil, if it is bad. There is absolutely nothing in H.R. 8298 nor in the Interstate Commerce Act that prevents a carrier from publishing reduced rates based on volume tendered by the shipper—to the contrary, the ICC has sanctioned five (5) car, twenty-five (25) car, unit train, rent-a-train, and guaranteed annual volume rates which are always lower than single car rates on the same commodities moving between the same points. Under regulation the large shipper is preferred today and the rent-a-train rates are a prime example of a rate that is known only to the shipper and the carrier and then only after they have utilized the rent-a-train for a full year under the contract.

In the motor carrier field agricultural bulk commodities move primarily under the exemption from economic regulation contained in section 203(b)(6) of the Interstate Commerce Act. Here, too, the volume shipper can be preferred over the small or occasional shipper. The agricultural community prefers the exemption from economic regulation contained in section 203(b)(6) because we know it results in lower transportation costs as demonstrated in the two USDA studies mentioned earlier in this statement.

It is our position that "no legislation" on the subject of the water carrier mixing rule is better than enactment of H.R. 8298.

We urge the subcommittee to reaffirm its action on S. 1314 of the 90th Congress. This bill would have:

(1) permitted the mixing of regulated and bulk commodities in a single tow;

(2) it would have eliminated the June 1, 1939 "Custom of Trade" clause which poses an artificial barrier to modern bulk commodity handling; and,

(3) deleted the present section of 303(b) which treats two or more barges in a single tow as being a single vessel.

While we are not opposed to the amendment to H.R. 8298, as proposed by the National Industrial Traffic league in its statement to this subcommittee, we do not believe it goes far enough. The amendment would delete the rate publishing provisions of H.R. 8298, which is the worst feature of the House passed bill, but it would not permit unlimited mixing of commodities in the same tow. Costs of providing the service are greatly reduced when larger tows are assembled

and the economy of the move is reflected in decreased costs to our member-shippers. This compromise proposal also retains the anachronistic language defining a bulk commodity.

I wish to thank the subcommittee for the opportunity to appear before you and make the views of the National Council of Farmer Cooperatives known on this matter which is so vital to our membership.

Senator HOLLINGS. Does your colleague, Mr. Skul, have something to add?

Mr. SKUL. Yes, sir; I have a prepared statement which I will read at this time.

STATEMENT OF ANTHONY J. SKUL, JR., ON BEHALF OF CF INDUSTRIES, INC.

Mr. SKUL. My name is Anthony J. Skul, Jr., I am manager of transportation for CF Industries, Inc., 100 South Wacker Drive, Chicago, Ill.

CF Industries is an agricultural cooperative owned by 18 member cooperatives (attachment "A") which are large regional wholesale organizations supplying their local cooperative members with supplies essential to the production of crops and other agricultural products.

Through its member-owners, CF Industries provides basic fertilizer products to well over 1 million farm families in 42 States and the Province of Ontario, Canada. In the fiscal year ended June 30, 1970, CF Industries distributed over 4 million tons of basic fertilizer materials, with sales of nearly $150 million.

CF Industries is a service operation designed to provide the farmer with chemical fertilizers at reasonable costs, and as such is a large manufacturer and distributor of phosphate, nitrogen, and potash fertilizer products. CF Industries is the part owner of several large ammonia plants in Louisiana and other States, part owner of a large Canadian potash facility, and the owner of a large phosphate plant in Florida.

CF Industries and its 18 member-owners are a major factor in the fertilizer industry. In accordance with our organization's goal of least-cost distribution, our system makes extensive use of water transportation, moving bulk fertilizer materials from basic manufacturing plants to regional storage points. During the past fertilizer year, the CF Industries' system moved approximately 500,000 tons of dry bulk materials via the inland waterways to storage points in market areas.

Because of the importance of low-cost water transportation to our system, we are strongly opposed to H.R. 8298 in its present form. We advocate passage of the amended version of H.R. 8298 submitted to this committee by the National Industrial Traffic League and others.

We support this amended version of H.R. 8289 which recommends that the bulk exemption be retained when bargelines carry not more than three bulk commodities in a tow, and which further recommends eliminating the provisions of H.R. 8298 which provide for the filing of rate tariffs. The passage of H.R. 8298 in its present form would increase the cost of barge transportation and place an added burden on farmer cooperatives and our Nation's farmers. It would destroy the flexibility and economy of water transportation. The shipping public would not be able to avail themselves of low-cost barge transportation, which Congress intended for the public to receive when the Trans-

portation Act of 1940 exempted bulk commodities from Federal regulation.

The publication and filing of tariffs for bulk materials can only lead to increased costs for shippers for the same services received today. Because barge carriers have different cost levels, it is reasonable to assume that if H.R. 8298 were passed in its present form with a requirement for the publishing of rates, the rate level established would be that of the highest cost barge operator.

The filing and publication of rates by bargelines would provide an economic advantage only to railroads by increasing the cost of services of the railroads' prime competition. Thus, Congress is being asked to provide a means of subsidizing the railroads at the expense of the public.

We respectfully urge the Senate Subcommittee on Surface Transportation to amend H.R. 8298 as recommended by the National Industrial Traffic League. We believe this amendment will continue to make available to the general public and the agricultural community the inherent advantages of low-cost water transportation. CF Industries believes that the suggested amendment reflects the original intent of Congress when part III of the Interstate Commerce Act was legislated.

CF Industries is particularly concerned with the bulk exemption as it relates to shipments of fertilizers. CF Industries uses all modes of transportation: rail, pipeline, motor carriers, and bargelines. Each mode of transportation has its own particular advantages, both in economics and service.

Our production facilities for anhydrous ammonia are located in the Baton Rouge, La., area, and we ship liquid anhydrous ammonia by barge and pipeline for subsequent distribution by rail and truck.

Potash deposits utilized by CF Industries and its members are located in New Mexico and Saskatchewan, Canada. Virtually 100 percent of our potash fertilizer is shipped by rail.

Phosphate rock deposits are located in central Florida. About 1.5 million tons of phosphate fertilizers are produced in Florida by CF Industries and shipped by rail and water transportation to markets throughout the country. If H.R. 8298 in its present form were passed into law, our company's substantial shipments of bulk phosphate materials by water would be severely affected.

The heaviest consuming market for our company's bulk phosphate materials is located in the Midwest—1,200 to 1,500 miles from our production facilities in Florida. The heaviest shipping and consuming seasons for phosphate are the spring (March, April, and May) and the fall (just prior to and after the grain harvest).

The greatest shipping and consuming peak would actually occur during an 8-week period in the spring, when we sell approximately 40 percent of our annual tonnage. Fertilizer is a highly seasonal commodity to market and we must use all modes of transportation available.

Several years ago, almost all of our bulk phosphate products moved from Florida to market by rail. However, severe car shortages during the peak spring and fall seasons did not allow us to ship all of the products needed by our farmer consumers.

Our studies showed that the most economical way to serve markets away from the inland waterways was by rail. However, because railcar availability is often inadequate during our peak shipping seasons, we had to seek an alternative distribution method.

CF Industries therefore established a distribution system of warehouses along the Illinois, Mississippi, and Missouri Rivers. We began shipping fertilizer in barges from Florida to these river warehouse locations for subsequent transfer to railcars and trucks in order to meet our peak season market demands. This barge and warehouse system was primarily established to meet the peak season shipping requirements that could not be handled by the railroads from our Florida manufacturing plants.

It is interesting to note that the railroads have published "all rail" rates from Florida to these Midwest river warehouse locations which are substantially lower than rail rates for comparable distances. Although these special rail rates from Florida to river locations are higher than barge rates, CF Industries has made use of this rail service from time to time.

H.R. 8298 in its present form would only increase transportation costs for the public and further add to inflation. Competition between the different modes of transportation is the only effective way in which we can hold the line on transportation costs. The railroads have had four general freight increases in the last 3 years and are currently seeking a staggering 15 percent increase.

Legislation such as H.R. 8298 should not be introduced to enforce higher transportation costs on the shipping public simply because the railroads would like to see their competitors' price of service increased. Passage of the suggested amendment by the National Industrial Traffic League would permit the barge carriers to continue to provide the same economy of transportation as is offered today.

CF Industries makes extensive use of rail equipment in serving its market. For example, during the past fertilizer year, CF Industries moved approximately 40,000 railcar shipments to local cooperatives through the United States and Canada.

This past spring, the railroads demonstrated that they simply cannot handle the current volume of fertilizer shipments. The railcar shortages faced by the fertilizer industry this past year were the most serious ever encountered, and from all indications, we can expect the shortage of rail equipment to continue for many years. Therefore, it is most important that the economies and service provided by water transportation be maintained.

We respectfully request that this subcommittee report a favorable amendment to H.R. 8298, permitting barge lines to mix tows with regulated and unregulated commodities, and also provide that tariffs need not be filed nor published.

In conclusion, although we endorse and support the position of the National Industrial Traffic League, the Fertilizer Institute, and the National Council of Farmer Cooperatives, we believe that enactment of Senate bill 1314 as introduced before the 90th Congress, which was reported out of this committee with a favorable report, would be a more favorable bill for the shipping public.

(The attachment to the statement follows:)

CF INDUSTRIES, INC.—MEMBER COOPERATIVE OWNERS

Agway, Inc., Syracuse, New York.
Cotton Producers Association, Atlanta, Georgia.
The Farm Bureau Cooperative Association, Inc., Columbus, Ohio.
Farm Bureau Services, Inc., Lansing, Michigan.
Farmers Union Central Exchange, Inc., St. Paul, Minnesota.
Farmland Industries, Inc., Kansas City, Missouri.
FCX Inc., Raleigh, North Carolina
FS Services, Inc., Bloomington, Illinois.
Indiana Farm Bureau Cooperative Association, Inc., Indianapolis, Indiana.
Intermountain Farmers Association, Salt Lake City, Utah.
Land O'Lakes, Inc., Minneapolis, Minnesota.
Midland Cooperatives, Inc., Minneapolis, Minnesota.
Missouri Farmers Association, Inc., Columbia, Missouri.
The Ohio Farmers Grain and Supply Association, Fostoria, Ohio.
Southern States Cooperative, Inc., Richmond, Virginia.
Tennessee Farmers Cooperative, LaVergne, Tennessee.
United Co-Operatives of Ontario, Weston, Ontario, Canada.
Western Farmers Association, Seattle, Washington.

Senator HOLLINGS. Thank you, Mr. Skul, and thank you, too, Mr. Graham, very much.

The next witness is Mr. N. L. Crauthers, vice president, Chotin Transportation, Inc., of New Orleans, La.

STATEMENT OF N. L. CRAUTHERS, VICE PRESIDENT, CHOTIN TRANSPORTATION, NEW ORLEANS, LA.

Mr. CRAUTHERS. Mr. Chairman, my name is N. L. Crauthers. I am vice president of Chotin Transportation, Inc., of New Orleans, La.

It is not my purpose in being here to burden the record with a lot of repetitious testimony. We belong to the American Waterways Operators, and I subscribe wholeheartedly to their statement as well as the statement that was presented here today by Mr. John M. Donnelly of Ingram.

I have been living with this problem some 12 to 15 years, that is the question of regulation versus deregulation.

Finally, back in 1967, at the 90th Congress, we got together, the waterway industry, the shipping public, and almost everybody else but the railroads and perhaps two or three organizations—we got together where we could speak with a single voice. We did this.

The common carriers would be the chief beneficiaries even if the orignal bill had been passed. But it would provide cheaper transportation. We think it's right, and we think that they should have it.

But when we get over on the House side—well, you are familiar, of course, with the fact that S. 1314 passed the Senate Commerce Committee—when we get over to the House, we were rather startled to see this amended bill come out. It not only left the onerous features of the law as it presently is, but it added to it the fact that we have to file our rates, and would permit the Interstate Commerce Commission to ask us for just about anything they want, and Lord knows what that would involve.

We certainly are opposed to H.R. 8298—that is, the amended bill H.R. 8298.

I don't know whether it has been mentioned here or not this morning—I haven't heard it, but it would be in the AWO statement—that

in filing of rates—we would have to file them on an individual basis rather than through a rate conference which is permitted, of course, to common carriers and all other modes of transportation. I think this would create a mighty expensive situation.

It has been pointed out too that in the long-term contracts it would be almost impossible to put all the provisions, the rules and regulations and everything that goes with the filing of a rate.

We don't know yet really in what manner we would be required to file these rates, whether it would be a tariff or what.

I think just about everything has been said that could be said. We would like to see the original bill passed, of course. But if we can't get that, we would find the bill that was presented here by the American Waterways Operators as far more acceptable to us than the amended bill.

We would rather nothing at all be done really, leave it like it is and start all over next year.

Senator HOLLINGS. How did that happen on the House side? Did you follow it closely?

Mr. CRAUTHERS. On the House side?

Senator HOLLINGS. Yes, sir. You say you were rather surprised. Did you follow that closely?

Mr. CRAUTHERS. Yes, sir.

Senator HOLLINGS. And how did that happen? I mean that it was reported out, instead of as a mixing bill like S. 1314, for example, as originally introduced and as passed this committee. How did it come out with this rate filing provision?

Mr. CRAUTHERS. Well, it's my opinion that the railroads got to them. They're a little bit stronger politically than we are.

Senator HOLLINGS. I like to ask a witness without a prepared statement, because I know when you get into these prepared statements you are sort of bound to stick to them. And I notice you are just talking from your own experience, and that's why I wanted to ask you that.

You think the railroads got to them? I hope we have a railroad witness to answer that.

Mr. CRAUTHERS. This is my opinion. I can't prove it.

You asked about a written statement. I was out of the city last week——

Senator HOLLINGS. That's all right. If you have a written statement, Mr. Crauthers——

Mr. CRAUTHERS. I was going to ask permission, if you so desired, that I present a written statement, but it would be very similar to opposing statements already presented.

Senator HOLLINGS. Your oral statement is better than a written one.

Mr. CRAUTHERS. Thanks. I haven't written anything.

Senator HOLLINGS. Do you wish to add anything further?

Mr. CRAUTHERS. No. I think it has all been said in statements that have been presented here today.

Senator HOLLINGS. Thank you very much. We appreciate your appearance.

We will next hear from Mr. James J. Reynolds, president of the American Institute of Merchant Shipping.

STATEMENT OF JAMES J. REYNOLDS, PRESIDENT, AMERICAN INSTITUTE OF MERCHANT SHIPPING; ACCOMPANIED BY JOHN PROKOP, LEGISLATIVE COUNSEL

Mr. REYNOLDS. Good morning, Senator.

Senator HOLLINGS. Glad to see you again, Mr. Reynolds. We appreciate your appearance.

Mr. REYNOLDS. Mr. Chairman, I appreciate very much this opportunity to appear briefly before you. I am not unmindful of your admonition earlier to keep our appearances within the 10-minute limitation, and I will respect that.

Mr. Chairman, my name is James J. Reynolds. I am accompanied by my legislative counsel, John Prokop.

Mr. Chairman, I am the president of the American Institute of Merchant Shipping. I do not have a prepared statement. I would welcome any questions that you might care to direct to me.

Senator HOLLINGS. Are you supporting the bill or opposing it?

Mr. REYNOLDS. Mr. Chairman, it will become very apparent shortly what our problem is. We have supported the original bill which was sponsored by the Congressman from Texas, Mr. Eckhardt, and the Congressman from Tennessee, Mr. Kuykendall, but the bill which has come out does in no way resemble that original bill.

If you were to ask me how it happened, I would say that when some of these jackals behind me were finished making their deals, the bill was redrafted in such a drastic way that it in no way resembled the original bill which we supported.

Senator HOLLINGS. You called them "jackals?"

Mr. REYNOLDS. I certainly do.

Mr. Chairman, we represent some 35 companies that own and operate over 8 million deadweight tons of U.S. flag oceangoing shipping. We do not number among our members inland barge operators, so you might well say: Why are you here?

Indeed, there was never one word of testimony uttered before the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee pertaining to the coverage in the original bill of oceangoing self-propelled carriers, not a word of testimony. Nor was there a word uttered from the floor of the House during debate with respect to the coverage of that bill of self-propelled oceangoing carriers.

So again you might very well say: Well, what are you doing here?

I'll tell you exactly what we're doing here, Mr. Chairman. We are objecting to the incredible development that occurred; after House hearings closed—without a word being uttered about the coverage in that bill of self-propelled oceangoing carriers, without a word of testimony solicited from us—the bill was redrafted in a way to provide that the term "water carriers" would cover the self-propelled oceangoing vessels in the coastal or intercoastal trade of this country.

When the bill came to the floor of the House and was introduced by the eminent and respected chairman of the House committee, Congressman Staggers of West Virginia, in his opening remarks said, and I quote directly:

> This bill does not propose any change in self-propelled vessels like the Great Lakes carriers. It was not intended either to make a change in any coastwise water transportation and oceangoing vessels, and at the appropriate time I will offer a committee amendment in this regard.

The debate then ensued. The Nelsen amendment came up, the Kuykendall endeavor to amend the amendment came up, and in the long dialog that ensued the appropriate committee amendment to make it clear that this bill was not intended to cover the self-propelled ocean carriers was lost in the shuffle.

Mr. Chairman, I discussed this as recently as last night with Chairman Staggers, and I'm authorized and privileged to tell you that Chairman Staggers wishes it known that that was a legislative oversight and our only refuge is before this committee to insist that the original intent of this bill be respected and observed; namely, that there was no intent to leave out self-propelled oceangoing carriers of this country under the bill.

That is the close of my impromptu statement, and I will be delighted to answer any questions you care to address to me.

Senator HOLLINGS. It is a very excellent and very positive statement.

The counsel suggests: Since we are amending the Interstate Commerce Act, which does not pertain to oceangoing self-propelled vessels—how could an amendment to the Interstate Commerce Act allude to or govern you?

Mr. REYNOLDS. Mr. Chairman, I have made available to the staff the appropriate language which is extremely brief as you note, at the bottom of the page, which merely inserts after the words "the Great Lakes" the words "or self-propelled oceangoing vessels operating in the coastwise or intercoastal trades."

That is the identical language which Congressman Staggers had in his hand, passed on to Congressman Friedel, whose duty it was to introduce and who failed to do so in the heat of the debate and the intense preoccupation with other matters.

It's as simple as that. There is no technical problem. It can merely be inserted in the draft of this bill.

Mr. PROKOP. When the bill was redrafted after hearings were closed, the all-inclusive term "water carriers" was used, and we were informed by the Interstate Commerce Commission that this would include the contract carriers in the coastwise trade and that specifically this should be exempted out.

We offered an amendment to the House committee which was partially accepted, exempting out the carriers in harbors and in the Great Lakes.

But the latter part of the amendment exempting the self-propelled vessels in the dry bulk coastwise trade was dropped.

Senator HOLLINGS. Mr. Reynolds, and you too, Mr. Prokop, we appreciate both of you appearing here this morning.

Mr. REYNOLDS. Thank you. It's a pleasure to be here.

Senator HOLLINGS. We will next hear from O. William Moody, Jr., administrator, AFL–CIO Maritime Trades Department.

STATEMENT OF O. WILLIAM MOODY, JR., ADMINISTRATOR, AFL–CIO MARITIME TRADES DEPARTMENT, ACCOMPANIED BY PAUL DROZAK, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

Mr. MOODY. Senator, we certainly thank you for this opportunity.

Senator HOLLINGS. Glad to see you again, Mr. Moody.

You may proceed, sir.

Mr. MOODY. Mr. Chairman, my name is O. William Moody, Jr. I am the administrator of the AFL–CIO Maritime Trades Department which has its offices at 815 16th Street Northwest, Washington, D.C. 20006.

With me is Mr. Paul Drozak, of Houston, Tex., a representative of the Seafarers International Union of North America, AFL–CIO.

The Maritime Trades Department of the AFL–CIO is an organization of 42 international unions which have an interest directly and indirectly related to all phases of our waterborne commerce whether it be on the lakes, the rivers, the canals, or the oceans. These unions represent nearly 8 million members.

We thank you for giving us the opportunity to present to you today our views on H.R. 8298 which proposes to amend section 303(b) of the Interstate Commerce Act to accomplish a long overdue revision of the act needed to permit the maximum utilization of technological advances by the inland towing industry.

The legislation before this committee is a matter of deep concern to workers represented by the unions affiliated with the Maritime Trades Department. The jobs of these inland boatmen and their economic future are tied to the economic future of this industry.

As the inland boat industry prospers, as it has every right to prosper, then there will be jobs and a livelihood for these workers. Any decline in this industry—a decline which is threatened by the absence of this legislation which you now have under consideration—will endanger the jobs and the means of livelihood of these men who we represent.

The inland boat industry is the one section of the entire American water transportation industry that has experienced growth in recent years. Barge lines account for 23 percent of all our water transportation. While our deep sea, Great Lakes and intercoastal water commerce has been declining, inland barge traffic has advanced 50 percent over the last 10 years. In 1967—the last year for which the figures were available to our research department—the value of this traffic was $341 million.

By contrast with the rest of maritime, which has steadily declined with respect to the size of our fleets, the number of barges and towboats operating along the 25,000-mile network of our inland waterways system has been steadily increasing. As a matter of fact our waterways are being widened and deepened and the system itself is being extended as a result of Government-sponsored efforts to open up more inland waterways to more operators and to promote greater efficiency in this mode of transportation.

It seems to us, Mr. Chairman, it would make little sense to make this considerable investment in waterways transportation while at the same time permitting the continued existence of an unreasonable legislative restriction on waterways operators.

In the 5 years between 1962 and 1967, an increase in the number and size of vessels used for towing in this country was accompanied by an increase in the number of non-self-propelled barges by about 2,000 to 18,611.

Some 80,000 workers are employed on the boats and barges operating on these waterways and another 80,000 are engaged in supporting shoreside capacities. The industry's total investment in carrier equipment is estimated to amount to more than $1.5 billion.

It is an industry which is important to shipbuilding and related occupations such as steel production and manufacturing of engines and electronic equipment. Obviously we are dealing with an industry of considerable importance to the national economy.

Despite the size of this industry it is interesting to note that it is made up of many small companies; just how many, no one seems to know. The American Waterways Operators, Inc., estimates that there are some 1,700 companies and we believe this estimate to be on the conservative side.

Parenthetically, I might add that there is some significance to be attached to the fact that so little is known about the capital structure of such a large and important transportation industry.

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 towboats, which move the barges, and the size and carrying capacity of the barges, themselves.

Together, the larger horsepower for the tugs and the larger carrying capacity for the barges, coupled with the development of barge design which permits integrating many such vessels into a single unit, has made possible a breakthrough in inland water technology undreamed of 30 years ago. Today, a single towboat often moves as many as 40 barges and more at once, carrying 50,000 tons of cargo at a time; the equivalent of the total payload of 2,000 trailer-trucks and equal to the carrying capacity of a dozen 70-car freight trains.

Consequently, the productivity increase on our inland waterways has been phenomenal. In 1947, inland waterways traffic totaled 34.5 billion ton-miles. By 1967, this had increased to 173.3 billion ton-miles a fivefold increase.

Shippers and consumers have benefited from this increased productivity which has been translated into the lowest costs of any of our forms of domestic transportation.

Moreover, barge costs are lower than they were 20 years ago, which is highly unusual in this day of steadily rising costs.

We think, Mr. Chairman, that this record of increasing productivity and dependable service to American shippers and consumers calls for encouragement of continued development and growth of waterways transportation—a process vitally affected by the provisions of H.R. 8298 dealing with section 303(b) of the Interstate Commerce Act, an act of Congress passed in 1939, and which the Interstate Commerce Commission is only now proposing be put into effect.

On three occasions, the ICC has delayed implementing this section of the act in order to permit Congress to consider the problems that would result from its enforcement. Unless Congress acts on this bill now, the ICC will be required to prohibit mixing after September 28, which is next Monday.

As a matter of fact, Mr. Chairman, the time is so short that we earnestly urge you to give favorable consideration to H.R. 8298, as passed by the House, without amendment, so that completion of legislative action in this session hopefully will be assured.

However, Mr. Chairman, I might add here that we would not be opposed to the amendment to which Mr. Reynolds referred to exempt the self-propelled deep-draft ocean carriers.

Senator HOLLINGS. How about the exemption of the rate filing features that have now been injected into this bill?

Mr. MOODY. Yes, I am speaking with reference to the deep-draft self-propelled ocean carriers.

Senator HOLLINGS. I know that. I understand that about what Mr. Reynolds testified to.

Now the other feature though—You say that you would favor passing H.R. 8298 without amendment of this Senate committee at this time——

Mr. MOODY. Yes.

Senator HOLLINGS (continuing). Which would include then the rate-fixing provision.

Mr. MOODY. That's correct. We're for that.

Senator HOLLINGS. You studied that closely and you support that?

Mr. Moody. We support that; yes, sir.

Should I proceed?

Senator HOLLINGS. Yes, sir. I wish you would complete that statement. Yes, sir.

Mr. MOODY. 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 group of barges made up into a single tow 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.

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 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 commodities carried. This would result in decreased utilization of barges and towboats with consequent increases in rates to the shippers and costs to the consumers. Obviously, this also would lead to a decline in the development of barge traffic as a significant factor in our Nation's transportation system.

H.R. 8298 would encourage the continuation of a healthy inland waterways transportation industry by amending the 1939 act to accomplish the following basic objections:

1. Permit the mixing of regulated and exempt commodities in a single tow without loss of the exemption and thus preserving economies of rate scale in barging.

2. Require publication of rates on all dry bulk commodities; thus correcting certain inequities in regulation as between railroads and water carriers.

3. Provide a cutoff date for the legislation and require a thoroughgoing study of water carrier operations as a basis for future policy actions of the Congress.

If this bill is 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 this process, this industry will be able to continue its important 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 respectfully urge that H.R. 8298 be reported out favorably as expeditiously as possible without amendment so that the inland waterways industry can go ahead with the development of its full potential for fulfilling its vital role in the transportation systems so necessary to a healthy national economy.

Again, Mr. Chairman, we thank you for this opportunity.

Senator HOLLINGS. Mr. Moody, I want you to elaborate just on this thought. You talked about the potential for inland water carriage and how it is growing and how healthy it is. We hear the other facts submitted by other witnesses that say 65 percent of the water traffic is carried by the nonregulated carriers. And we have no hangup about the oceangoing self-propelled vessels about which Mr. Reynolds testified. But it seems that you would be testifying to perhaps, as you indicate, doing away with this mixing problem that we have and which is before the Interstate Commerce Commission on next Monday and that you would want to sever that from the actual rate filing.

Everyone has testified it either costs the consumer more or it has stultified the traffic, has eliminated competition.

Why do you ask now that we start filing rates for the nonregulated carriers which are responsible in large measure for this growth that you testified to here?

Mr. MOODY. I might respectfully point out, Senator, that I don't think I said in my testimony that the great growth resulted from unpublished rates.

Senator HOLLINGS. Well, that's where the growth has occurred.

The gentleman who said he was regulated, as his best memory, said 17 in his own group and not more than 50, and they didn't carry but some 30 or 35 percent at best as he could tell.

So the great growth in competitive factor of water tonnage, to use that general phrase, has been experienced in the nonregulated carrier field. Isn't that correct?

Mr. MOODY. Well, certainly it has been experienced in the nonregulated field, but I think there has also been a growth in the regulated carrier field. They are certainly carrying more commodities and——

Senator HOLLINGS. Well, it has been experienced. Let's take that answer then that it has been experienced in the regulated carrier field and ask why would you want to put the nonregulated under the provision of filing their rates? Why would that be needed by the regulated carrier if they are experiencing growth?

Mr. MOODY. Well, I would think that if the regulated carrier— and this is just off the top of my head—but perhaps if he was not subjected

to what we think sometimes is unfair competition from the unregulated carrier who is not required to publish any rates, that maybe his rate of growth would perhaps have been faster than it has been.

And he has been, we think, the responsible fellow who pioneered innovations in this industry.

And we think in the absence of really any indepth study of the industry it is a little difficult to say just what is going on.

This is one of the reasons that we favor the study provisions of the bill and the publication of the rates.

Senator HOLLINGS. Suppose that the Senate got back to its S. 1314, I believe is the number that we passed out of this committee before, which was the bill H.R. 8298 as it was originally introduced. Suppose we reported that favorably to the Senate floor. Would your organization support that without the rate fixing feature in it?

Mr. MOODY. Yes, we would, Senator. We supported it before, and we would again, because we agree with everybody in the industry that the important thing——

Senator HOLLINGS. Is to do away with this mixing problem?

Mr. MOODY. Do away with this mixing problem. We think the best interest of the industry would certainly be served if we knew more about it and if we would go through with this trial period, this 2-year study period, in which we publish some rates and know where we are and what we are doing.

Senator HOLLINGS. How about Mr. Drozak from the SIU? Would you support the bill that dealt solely with the mixing problem and eliminated the feature that would require the filing of rates?

Mr. DROZAK. Yes. But I think that there should be a study made of the entire industry, because no one today actually knows what is taking place in the inland field.

Senator HOLLINGS. This study as I see it would be required or should be required before the requirement of filing rates rather than after as H.R. 8298 now is before this Senate? Isn't that correct? Wouldn't that be logical?

Mr. DROZAK. I would think so.

Senator HOLLINGS. I think so.

Mr. Moody, do either you or Mr. Drozak have anything further?

Mr. MOODY. No, that completes our presentation.

Senator HOLLINGS. We appreciate very, very much both of you appearing this morning.

Mr. MOODY. Thank you, sir.

Senator HOLLINGS. Mr. Harry J. Breithaupt, Jr., general solicitor, Association of American Railroads.

STATEMENT OF GREGORY PRINCE, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. PRINCE. Senator Hollings, my name is Gregory Prince.

Senator HOLLINGS. Oh, you are not Mr. Breithaupt.

Mr. PRINCE. My name is Gregory Prince. I am executive vice president of the Association of American Railroads, and unfortunately Mr. Breithaupt met with a mishap and I learned yesterday afternoon that he would be unable to appear here this morning.

Senator HOLLINGS. We are sorry to hear that, but we certainly welcome you.

Mr. PRINCE. Well, it seemed to me this was a matter of such importance that the railroad industry should have a live witness to testify and perhaps you might have some questions you would like to put to a live witness.

Senator HOLLINGS. I think you have heard some of the testimony of what they have called you.

Mr. PRINCE. I am used to that, Senator, and my shell is pretty hard. Those who throw them should be willing to receive them too, and I can throw a few myself. But I am not here to do that. I am here if I may to—I'd like to have Mr. Breithaupt's statement inserted in the record.

Senator HOLLINGS. We will include his entire statement in the record after your oral testimony.

Mr. PRINCE. I would prefer not to read somebody else's statement, and I would like to make just a few comments on my own if you will permit me.

Senator HOLLINGS. Yes, sir.

Mr. PRINCE. The situation we find ourselves in today without any legislation is an intolerable one for the railroads. We are obliged in connection with the handling of bulk commodities to publish our rates, file them, open them to the public, and change them only on 30 days' notice. They are subject to review by regulatory authority to see whether they meet the standards of justness and reasonableness. They must meet the test of nondiscrimination.

They can't be unduly discriminatory or create any undue preference. They are subject to long and short haul clause and aggregate of intermediates in the fourth section of the Interstate Commerce Act.

Our rates are subject to complaint; our rates are subject to suspension—and these steps may be at the instance of the competing form of carrier such as the inland waterway carriers.

Now, this exemption has left us in the position where we have grossly unfair competition. We have set about through the years to try to correct it. Every effort we have made has met with resistance from these competing carriers.

As the problem came before the committees of Congress this time, it was as a result of decisions of the court which placed some limitations upon the interpretation of the exemption regarding the mixing rule and their ability to mix bulk commodities with nonbulk commodities in the same tow.

We felt that that strict interpretation was one that should be adhered to but we also recognized that for the common carriers this was imposing an economic hardship on their ability to utilize their powerful new towboats and in putting together their bulk commodities and nonbulk in the same tow.

So in an effort to bring about a settlement of this two-edged question, one of inequality of regulation as between the railroads and the water carriers, and, two, to take care of the problem of the lack of economy that would stem from a strict interpretation of the mixing rule, the House has passed this bill, H.R. 8298. And we stand here endorsing that bill as a sound solution to a very knotty problem.

It does not give any of the parties what they would like. But neither

has any other solution. The solution that would have merely taken care of the mixing problem was an intolerable one from our standpoint, we think wholly inequitable.

We're already at this severe disadvantage. And to broaden that disadvantage by opening up the mixing rule restriction just was one that we couldn't tolerate.

We made several offers on this matter. When the bill was before the House committee, our testimony——

Senator HOLLINGS. You did testify on the House side?

Mr. PRINCE. Yes, sir. We did testify on the House side. And our witness, who was to have been your witness here today, Mr. Breithaupt—I'll just read you one paragraph of that statement:

> 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.

Now, who through the years have been the most ardent opponents of any such suggestion as that? The American Waterways Operators, Inc. While they say it's in the public interest for them to be free of regulation, any effort to reduce the amount of regulation on their competitors, the railroads, meets with their all-out opposition.

We have sought before the Congress just a modest lessening of that regulation in the form of elimination of minimum rate control, leaving on the railroads all of the other controls under the Interstate Commerce Act, and they fought that tooth and nail.

So what they really want is two sets of rules to live by, one applicable to them which leaves them free from regulation, which they call in the public interest, and the other applicable to railroads, their competitors, which subjects them to full and complete regulation.

They can see our rates. All they have to do is cut their rate to take advantage of the opportunity of the traffic.

You know yourself it would be intolerable to try to compete successfully in a situation like that.

So we feel that what you have before you is a reasonable compromise of a very difficult problem. And bear in mind that as has been stated by a number of witnesses here this morning there really is very little knowledge about how these people operate. And this Congress ought to have that knowledge, and they can get it out of this bill. And for a 2-year period for them to have to publish their rates and abide by their rates seems to us to be a very reasonable proposal and not one that could be highly burdensome to anyone.

So, Mr. Chairman, we urge you to look at this thing not narrowly but look at the whole picture, and I think you will come to the conclusion that this bill has much merit.

It has been studied. It has been worked on. Your committee has made efforts to find the solution. So has the House committee. And this one has come out and has a great deal of support, and we think it is a very fair and reasonable solution.

Senator HOLLINGS. Mr. Prince, you were talking about the amendment that would provide the railroads exemptions from regulations for the transport of bulk commodities. If you would favor that amendment, would you also favor an amendment that would somewhat limit this authority you have now to join together in rate bureaus to fix rates amongst the railroads?

Mr. PRINCE. Not with the amount of regulation that would be left under any proposal that has been before Congress.

In other words, when the so-called deregulation bill was pending before the House Interstate Committee and the subject of long hearings, we testified, and we testified for the retention of the rate bureaus and section 5(a) immunity from the antitrust laws, and we think properly so, because no suggestion has been made for deregulation of the character that the unregulated water carriers now have.

The only thing that bill was going to do was to withdraw the right of the Commission to set aside a rate because it was below the reasonable minimum, and left us with all the other controls that I mentioned at the outset of my statement, control over maximum rates and the right of suspension, right of complaint, justness and reasonableness on the high side. All those things were left intact.

We would have no objection if these people had rate bureau protection if they felt they needed it.

Senator HOLLINGS. You gave us general testimony that the filing of rates is in the interest of the consumer and shipper, that carrier rates then go down, tend to decrease. Specifically, I think it was Agricultural Department figures used if I remember correctly by Mr. Graham in his testimony to show their study that when carriers not required to file rates that that inured to the benefit of the consumer, and in that case of course to the farmer in that they got decreases in rates. From your experience as a regulated carrier required to file rates, do you know of a study in contrast to that that perhaps would have been made by your association or the Department of Transportation or the Interstate Commerce Commission to show that the filing of rates decreases the costs rather than increases the costs?

Mr. PRINCE. We have made no such study, Senator Hollings, and I don't know that there is such a study that has been made either by the Commission or the Department of Transportation. You would have to ask them.

There are short-term advantages sometimes from total freedom from regulation. And this is a broad policy question for the Congress to pass upon. It can't be done lightly. And I think they would have to have the benefit of a lot of expert testimony before they could determine which was in the broad public interest or which was more in the public interest, regulation or nonregulation of rates.

We do think, however, that it is very unfair to have one segment totally unregulated competing against another fully regulated segment.

Senator HOLLINGS. Perhaps you would also want to comment about this surprise expressed by some of the witnesses that somehow rate filing was not even discussed or considered on the House side. They went in with a mixing provision concern and then when the bill came out it went into this filing of rates by nonregulated carriers.

Did the American Association testify as you are testifying here today in behalf of the filing of rates when you appeared—Mr. Breithaupt in his testimony?

Mr. PRINCE. I can't tell you for sure whether in the course of questioning that came out. I don't think that that was the proposition that he advanced in his testimony.

Senator HOLLINGS. I see.

Mr. PRINCE. I think the main thrust of it was as I read to you here. But that has been and always will be I guess bitterly opposed.

Senator HOLLINGS. Were your surprised when H.R. 8298 came out?

Mr. PRINCE. Pleasantly surprised.

Senator HOLLINGS. You were surprised though?

Mr. PRINCE. But pleasantly surprised, because I thought that the committee had come up with a reasonable solution.

Senator HOLLINGS. But had that solution been discussed?

Mr. PRINCE. I am unable to say, Senator.

Senator HOLLINGS. Now, on that letter of the Department of Transportation, also, please, Mr. Prince, I am going to get you a copy of that and ask for your comments on the Department of Transportation letter dated February 20, I believe it is of this year.

(The following information was subsequently received for the record:)

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., September 28, 1970.

Mr. DANIEL O'NEAL,
Surface Transportation Counsel, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. O'NEAL: With your letter of Sepember 23, 1970, you sent copy of a letter addressed to the Chairman of the House Rules Committee by the General Counsel of the Department of Transportation on February 20, 1970. You asked for my response to questions raised by Senator Hollings, during the Barge Mixing Rule hearing on September 22, with respect to the suggestions contained in the aforementioned letter.

The only one of the proposals advanced by the Department of Transportation to which we would object on substantive grounds is that calling for elimination of the June 1, 1939, "custom of the trade" limitation, which restricts applicability of the bulk commodity exemption to commodities that moved as bulk on June 1, 1939 (¶ B in the February 20 letter). The water carriers' exemption already discriminates against the railroads, and to enlarge it so as to include commodities not now within its coverage would worsen the discrmination.

If the Senate Commerce Committee should decide to adopt any of the other suggestions for amendment of the bill advanced by the Department of Transportation, it is our sincere hope that preparation and aproval of the amendatory language will not delay enactment of the measure. Indeed it should be borne in mind that if H.R. 8298 is amended in any respect, delay will ensue because of the need to reach accord between the Senate and the House of Representatives.

Sincerely,

HARRY J. BREITHAUPT, Jr.

Senator HOLLINGS. And we appreciate very much your appearance here this morning.

Is there anything you wish to add?

Mr. PRINCE. No; I don't think so. I'm sure it would be repetitious. I'd like to tell you I mean what I say about this, and I think you've got a reasonable solution of this knotty problem.

Senator HOLLINGS. Yes, sir. Thank you very much, sir.

(The statement referred to earlier follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL SOLICTOR, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am General Solicitor of the Association of American Railroads, with headquarters at Washington, D.C. My appearance here today is by authority of the Board of Directors of the Association and is for the purpose of expressing the support of the Association and its members for H.R. 8298 as passed by the House of Representatives on August 12, 1970.

It would serve no worthwhile purpose at this stage, I think, for me to trace the long history of the Commission proceedings and court decisions that have

culminated in this hearing.[1] The situation, in a nutshell, is that the Interstate Commerce Commission and the courts (including the Supreme Court) have said that section 303(b) of the Interstate Commerce Act means precisely what it says: that is, that in order to avail themselves of the exemption from regulation contained in section 303(b) water carriers must transport not more than three bulk commodities in a single tow and must refrain from mixing bulk and non-bulk commodities in the same tow.

Nor would it serve any particularly useful purpose at this juncture, it seems to me, to review in detail the long history of Congressional consideration of the subject. Lengthy records have been made before this Committee and its House counterpart.

The barge lines' initial legislative objective, stated quite simply, was to remove the stautory limitations to which I have referred so that they might enjoy exemption from regulation in the carriage of bulk commodities irrespective of whether more than three such commodities were to be transported in a single tow and without regard to the mixture of bulk and non-bulk commodities in the same tow.

Such a liberalization of the regulatory exemption given water carriers in the transportation of bulk commodities would have had a most adverse competitive effect upon the railroads. The present exemption, itself, discriminates against the railroads. To have simply broadened the scope of that exemption, by removing the existing limitations upon its applicability, without suggestion of counterpoise, would have aggravated 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 non-bulk 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 thirty days' notice; to observe the prohibitions and requirements of the long- and short-haul clause, and the aggregate of intermediates clause, in section 4 of the Interstate Commerce Act; and to avoid unjust or undue discrimination, preference or prejudice. 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.

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 barge lines have. It has been an intolerable competitive situation for the railroads. Bulk commodities constitute a very important part of railroad traffic, and substantial quantities of this traffic are the subject of intense competition between the two modes.

For these reasons, the railroads over the years have steadfastly resisted any enlargement of the water carriers' exemption. They have vigorously opposed repeal of the so-called Mixing Rule (i.e., the rule against mixing).

The certificated common carrier barge lines, on the other hand, contend that the effect of not having an exemption on bulk commodities when bulk is mixed with non-bulk would be unecomonic and wasteful. They say that the competition between themselves and the uncertificated barge lines is such that they cannot afford to have their bulk traffic subjected to rate regulation; and they say that to operate unmixed tows (thus retaining the exemption on bulk freight) would result in shorter, noncapacity or less-frequent tows that would deprive them and their shippers of the economies and efficiency they are able to attain through maximum utilization of their modern technology (powerful towboats, etc.).

[1] 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). See also Commercial Transp. Corp., 300 I.C.C. 66 (1957), sustained Sub. nom. *Commercial Barge Lines, Inc.* v. *United States*, 166 F. Supp. 867 (E.D. Mich. 1958), aff'd per curiam, 359 U.S. 342 (1959); American Barge Line Co., 294 I.C.C. 796 (1955), and the cases there cited.

Impasse has been the result. But now the House of Representatives has come up with a compromise, H.R. 8298, which will:

(1) Permit mixing to the extent that water carriers could transport as many as three dry bulk commodities exempt from regulation even though transported concurrently with non-bulk commodities being handled subject to rate regulation.

(2) Require unregulated water carrier rates for transportation of dry bulk commodities to be filed and published in tariff form and adhered to, with changes to be made only after statutory notice.

(3) Preserve existing law, however, with respect to water carriers operating solely within a harbor or within the Great Lakes.

(4) Provide that the amendments above-described are to expire at the end of two years, with the Interstate Commerce Commission to report to the Congress at the time on the operation of the amended exemption; and the Commission would be empowered to require reports from the otherwise exempt water carriers in order to prepare its report to the Congress.

If this bill is enacted, the certificated barge lines will be able to continue their present operating practices, making full use of their modern technology. At the same time, their charges for exempt dry bulk transportation will be made public (not regulated, but made public). The charges of non-certificated barge lines for dry bulk transportation will also be made public (again: not regulated, just made public). With these requirements for publication, all the carriers competing for dry bulk traffic—the railroads, the common carrier barge lines, the contract carrier barge lines, the unregulated barge lines—will know each other's charges and thus be better able to compete on fair and equitable terms. Similarly, the public (including shippers) will know for the first time what is being charged by all.

In our view, this bill offers a fair and reasonable solution to the knotty and controversial problem that has plagued the water carriers, the railroads, the shippers, the Interstate Commerce Commission and, not least, the Congress, for all these years.

The railroads support H.R. 8298 without amendment.

Senator HOLLINGS. Dr. William H. Joubert is the chairman of the legislative committee of the Southern Paper Manufacturers Traffic Conference.

STATEMENT OF DR. WILLIAM H. JOUBERT, CHAIRMAN, LEGISLATIVE COMMITTEE, SOUTHERN PAPER MANUFACTURERS TRAFFIC CONFERENCE

Dr. JOUBERT. Senator Hollings, today I represent the Southern Paper Manufacturers Traffic Conference as chairman of its legislative committee and also represent the Bowaters U.S. corporation, which owns and operates a pulp and paper mill at Calhoun, Tenn., on the waterfront of the Hiawassee River which flows into the Tennessee River 18 miles downriver from our plant.

Senator HOLLINGS. Well, you are welcome, sir. You may sit down.

Dr. JOUBERT. I'd rather stand if I may.

Senator HOLLINGS. Yes, sir. You are free to.

Dr. JOUBERT. I will first explain the position of Bowaters concerning H.R. 8298.

In 1948, when Bowaters location team came over from London to select the site of the new mill, they approached the TVA for information and TVA assigned me to assist these officials in selection of a suitable location. Following much study of transportation service and costs and other data, Bowaters chose the Calhoun, Tenn., site and soon thereafter employed me as their traffic manager. A major reason for choice of Calhoun was the availability of barge transportation.

In 1954, our first year of operation, we produced about 120,000

short tons of newsprint and 130,000 tons of baled woodpulp. We shipped inbound about 700,000 tons of pulpwood, and approximately 60,000 tons of chemicals and other raw materials.

Since that time the Calhoun plant has expanded tremendously. I estimate that in 1970 we will ship outbound approximately 485,000 tons of newsprint and groundwood paper and 37,000 tons of woodpulp in bales. We will ship inbound more than 1,400,000 tons of pulpwood and woodchips and 120,000 tons of chemicals. Our total freight will grow to about $8 million annually, $2 million of which will be for barge transportation.

In other words, we have a profound interest in barging.

We also use other means of transportation. In 1970, for example, we will ship outbound about 1,400,000 tons of product by rail and about 447,000 tons by barge.

We are not the only company in the Southern Paper Manufacturers Traffic Conference that has an interest in barge transportation. For example, Champion Papers, Inc., barges from Pasadena, Tex., to Chicago, Ill., and Knoxville, Tenn. Champion Papers has also built a mill on the waterfront of the Tennessee River in northern Alabama and intends to utilize barging there.

Another company with an interest in barging is Southland Paper Mills, which has completed a new newsprint mill at Sheldon, Tex., and will barge, for example, to Omaha, Nebr.

Another member of our conference with a deep interest in barging is the International Paper Co. with waterfront locations at Georgetown, S.C., Natchez, Miss., Mobile, Ala., and other points along the inland waterways.

And an extremely interesting and pertinent innovation recently adopted by International Paper Co. is the so-called LASH vessel named the *Acadia Forest*. This ship, which is the length of three football fields, will hold 73 barges each of which is about 61 feet long, 32 feet wide, and 13 feet deep, with a draft of about 8.5 feet of water.

Those barges can move in regular barge tows up the inland waterways of this country, load and return to the *Acadia Forest*, be hoisted aboard and stowed by an overhead bridge crane and haul freight around the world, with only one loading at origin and one offloading in a foreign market.

Not only the above-mentioned firms but several other paper companies are locating plants on the waterfront to take advantage of inland navigation.

I would like to add to some of the points other witnesses have made about the growth of inland waterway transportation by citing expectations for expansion of traffic on the Tennessee River. Last year, for example, the total tonnage that moved on the Tennessee River was 24.5 million. TVA has made some projections about the future growth of traffic on the Tennessee River which estimate that in 1980, it will carry 40.5 million tons, and in the year 2000, 63.7 million tons.

The U.S. Government alone in 1958 invested $1.275 billion in deepening and developing its inland waterway system.

And yet we are using this system only to about 25 percent of its capacity.

Briefly, we are in favor of H.R. 8298 as amended by the House and as submitted to this committee and as it stands before this committee

now with the possible exception of the injustice against this industry that Mr. Reynolds has mentioned.

In summary, there are several reasons why I urge this committee to adopt H.R. 8298 in its present form.

The 1967 court decision nullifying barge mixing stated that Congress—not the courts and not the Interstate Commerce Commission should provide the remedy, because section 303(b), as written makes barge mixing illegal.

Another argument is that barge mixing has been a conventional practice for years. For example at Bowaters we have for 16 years mixed barges of our packaged freight with barges of oil and grain and coal. This 1967 decision came as a shock to us. We didn't realize that the practice which we had been carrying on in good faith was completely illegal.

Another argument, of course, is that our inability to mix would destroy investments in waterfront paper mills. In other words, you will be depriving us of one of the major means of transportation if we do not correct this barge mixing problem.

We must also recognize that modern navigation is in its infancy. We want navigation to gain maturity. If we believe in the public interest and I do, we want these waterways to be used not only for unregulated freight but for regulated freight.

There is not a single sound argument agains H.R. 8298 as it stands now. Every ton of freight that my company ships, except an insignificant volume of Bunker C fuel oil, moves on a published rate. I find publication no handicap. If I want to negotiate a lower rate I can negotiate a lower rate sometimes successfully, sometimes not.

Senator HOLLINGS. Then you wouldn't mind if we excluded the rate fixing requirement for the nonregulated carriers? It wouldn't affect you? You'd have nothing to lose?

Dr. JOUBERT. No, sir, I wouldn't mind. Bowaters—

Senator HOLLINGS. What you really want to do is solve that problem of barge mixing? Isn't that correct?

Dr. JOUBERT. Barge mixing. But I wouldn't let this business of publishing rates kill the bill.

Senator HOLLINGS. Kill the bill one way or the other?

Dr. JOUBERT. That's right. Really I don't object to the fact that my rates are published.

Senator HOLLINGS. Right. You wouldn't care one way or the other?

Dr. JOUBERT. That's right. But then we must consider that the railroads have to publish every single one of their rates. The regulated truck lines, except for agricultural commodities and fisheries, have to publish every single rate. The regulated airlines have to publish all of their rates. The regulated freight forwarders have to publish all of their rates. The regulated pipelines have to publish every rate.

What is so sinful about publishing a rate or so costly about publishing at rate?

That concludes my statement, and thank you, Senator.

Senator HOLLINGS. You ended on a good high note, doctor. We appreciate your appearance.

I think the main thing you have already answered. What we are trying to do is solve the barge mixing problem. It isn't the publication or nonpublication or lowering or raising costs that's at issue. The

main thing is that something should be done to face up to this immediate problem of mixing which if it is to be changed according to the court, it must be changed by Congress. Isn't that correct?

Dr. JOUBERT. That's right, sir.

Senator HOLLINGS. We appreciate very much your appearance here this morning. Thank you, sir.

(The statement follows:)

TESTIMONY BY DR. WILLIAM H. JOUBERT, CHAIRMAN, LEGISLATIVE COMMITTEE, SOUTHERN PAPER MANUFACTURERS TRAFFIC CONFERENCE

Today I represent the Southern Paper Manufacturers Traffic Conference as chairman of its legislative committee, and the Bowaters United States Corporation, which operates a pulp and paper mill located on the waterfront of the Hiwassee River at Calhoun, Tenn. I am general traffic and distribution manager of this company.

I urge the Senate Sub-committee to vote in favor of H.R. 8298 in the form and as amended and approved by the House of Representatives and as submitted to this committee for its consideration.

The Bowater Organization selected the Hiwassee River waterfront site for its great plant mainly because of the availability of barge navigation for the inshipments of pulpwood and other raw materials and out-shipments of newsprint, groundwood, and other finished products to markets on the Mississippi, Ohio, Missouri, Illinois, and Arkansas rivers and the Gulf Intracoastal Waterway.

As transportation economist for the Tennessee Valley Authority between 1946 and 1953, I cooperated with Bowaters' location team for three years in evaluating possible locations in the Tennessee Valley. Following selection of the Hiwassee site, Bowaters employed me as its traffic officer in charge of all phases of transportation to and from the Tennessee mill, which began operation in 1954.

During the first year's operation, this facility produced approximately 120,000 tons of newsprint and 130,000 tons of baled woodpulp, and received inbound approximately 280,000 cords of pulpwood and 60,000 tons of various chemicals and other raw materials. That year we barged only a minuscule proportion of both our inbound and outbound freight.

In the ensuing sixteen years the Calhoun plant has enjoyed a goodly expansion in size and productivity. Based upon statistics available to date, I have prepared the following table estimating for calendar year 1970 the total inshipments and outshipments of this mill. (See table on the following page:)

ESTIMATED INBOUND AND OUTBOUND FREIGHT OF BOWATERS' TENNESSEE MILL FOR CALENDAR YEAR 1970

[In net tons]

	Via—					
	Rail	Truck	TOFC	Barge	Pipeline	Total
Outbound freight:						
Newsprint	215,596	24,576	3,220	95,276		338,668
Groundwood	63,878	61,198	7,780	12,984		145,840
Woodpulp	36,686	256				36,942
Soap skimmings	16,448					16,448
Inbound freight:						
Pulpwood	1,108,455			134,650		1,243,105
Woodchips	7,380			204,465		211,845
Alum		20,744				20,744
Crushed stone	5,500					5,500
Hypochlorite		73,600				73,600
Lime	5,660					5,660
Rosin sizing	280					280
Salt cake	2,586					2,586
Sodium aluminate		600				600
Sulfuric acid		5,354				5,354
Zince hydrosulphite		3,126				3,126
Chlorine					11,818	11,818
Caustic soda					52,674	52,674
Total	1,462,469	189,454	11,000	447,375	64,492	2,174,790

The total freight bill at Calhoun in 1970 will exceed $8,000,000, more than $2,000,000 of which will be for transportation via the inland waterways.

Other members of the Southern Paper Manufacturers Traffic Conference with a vital interest in barging are Champion Papers, Inc., which barges a substantial tonnage of woodpulp from Pasadena, Tex. to Knoxville, Tenn., and of printing paper from Pasadena to Chicago, Ill. Also, Southland Paper Mills, which operates a large newsprint plant at Sheldon, Tex., utilizes inland water transport extensively. And too, Union Camp Corporation of Savannah, Ga. receives inbound domestic shipments via the Atlantic Intracoastal Waterway.

International Paper Company, the world's largest manufacturer of paper products, has mills at the waterfronts of Mobile, Ala.; Pine Bluff, Ark.; Natchez, Miss.; Georgetown, S.C. and other port cities. IP has within the past year inaugurated shipments via the remarkable LASH (lighter aboard ship) vessel named the ACADIA FOREST. The ACADIA FOREST, which is the length of three football fields, accommodates 73 barges which can be loaded onto the vessel in less than 24 hours. The barges each measure 61 feet in length, 32 feet in width and are 13 feet high. The LASH barges, each of which can carry about 450 short tons of cargo and have a draft of only 8½ feet, are capable of sailing in barge tows throughout the inland waterway system to gather freight to return to the ACADIA FOREST for trans-shipment at speeds exceeding 20 knots per hour to markets around the world. The first voyage from the United States to Europe of the ACADIA FOREST was a success beyond expectations.

In sum, the Southern Paper Manufacturers Traffic Conference includes forty-five companies producing 98 percent of all the pulp and paper produced in the Southeast and Southwest, with an annual freight bill exceeding $800 million, has a vital stake in navigation on the inland waterways. In fact they voted unanimously to support barge-mixing.

Failure to enact H.R. 8298 will render it impossible for Bowaters to mix its barges containing regulated freight with barges loaded with unregulated freight, the latter of which constitutes 90 to 95 percent of all waterway movements. If we cannot effect this combination, the common carrier barge lines will, of necessity, have to charge us such high freight rates that Bowaters and other paper companies may have to abandon altogether their barging programs. The reason for that is quite simple. The major, if not the sole, advantage of inland waterway movement is its cheapness. Common carrier barge lines can charge low rates only when they can move many fully loaded barges pushed by one towboat.

Major arguments in favor of the legislation now before this subcommittee are as follows:

1. The decision of the U.S. Supreme Court which upset the traditional practice of mixing barge tows states that Congress is the proper source of remedy for any injustice resulting from the tribunal's ruling. (See Supreme Court No. 947, March 20, 1967.) The justices ruled that if Congressional handiwork had produced unwanted results, if was for Congress, not the judiciary to right the machinery.

2. The fact that for many years barge lines mixed regulated and unregulated freight without serious objection by any government agency justifies continuance of that practice. In 1940, Congress adopted national regulation of water carries including Section 303(b) of the IC Act, the so-called bulk exemption provision. From 1940 until 1967, the barge lines regularly mixed the two types of loads in the same tow. At the same time, they honored the provision exempting bulk freight from regulation. Both the barge lines and shippers felt the restrictive provision in 303(b) did not prevent mixing exempt and non-exempt barges. The Supreme Court's ruling was a shocking surprise to shippers of nonexempt freight on the inland waterways of the United States.

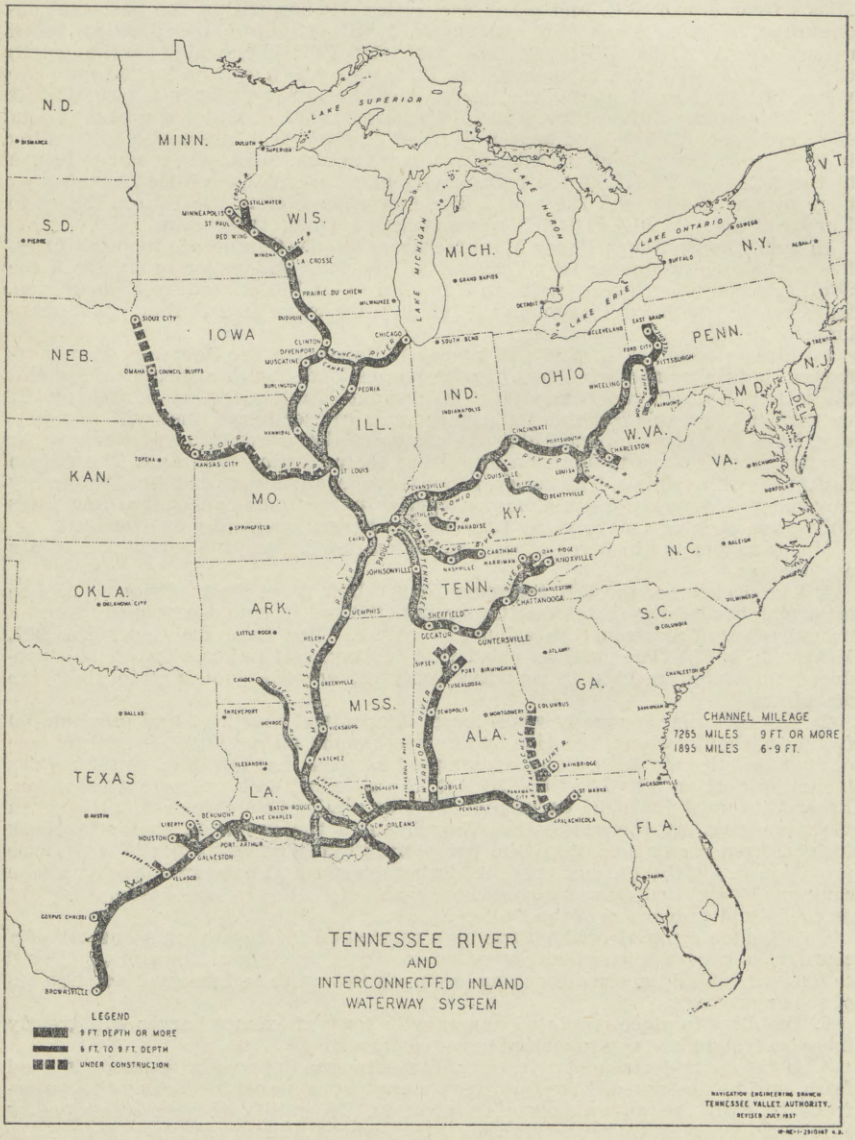
To abandon a practice which has been carried on for more than a quarter of a century, a practice in which everyone involved, including Bowaters, believed to be legal, would impose a crushing loss upon Bowaters and many other shippers of paper products.

3. Inability to place regulated barges with tows of exempt barges will greatly increase freight costs on regulated barge commodities.

4. If the court decision stands, capital investments in paper mills, made in good faith, will be destroyed. Like Bowaters, many paper plants located on the waterfront to gain the advantages of navigation. To nullify those advantages by eliminating access to barge transportation would almost certainly reduce the tremendous capital investment in these facilities.

5. Modern navigation on the Tennessee River and other waterways of the U.S., particularly of regulated commodities, is in its infancy. For example, the total volume of freight moving on the Tennessee River in 1969 was 24,500,000 tons, fewer than 2,000,000 of which was regulated freight. In its projections of tonnage in connection with planned new lock construction of a new lock at Pickwick Dam, TVA estimated that this water would carry 40,500,000 tons in 1980, and 63,700,000 tons in the year 2000.

The public interest demands that river commerce mature to full development and that mixing of barges continue in order that shippers of non-bulk freight can gain from the advantages which that growth will produce.



6. There is no sound argument against H. R. 8298. Section 303(b) exempts all bulk freight from regulation and from the publication of any rates, whereas every pound of the freight of my company, except Bunker C fuel oil, moves on published rates via all means of transportation. Bargeloads of grain, phosphate rock, or coal, which at present are bulk exempt, are no more sacred than bargeloads of newsprint paper which must bear, and gladly bears, published rates when shipped via common carriers.

The railroads must publish all of their for-hire rates, so must the regulated truck lines (except agricultural and fishery products), air lines, freight forwarders and pipelines. It is illogical and unreasonable for a few privileged commodities to move for-hire on the inland waterway system under secret rates and secret agreements, and utterly ridiculous for the lines barging and producers shipping those commodities to attempt to destroy my company's and my industry's use of the inland waterway system.

7. The inland waterway system of the United States, noted on the map attached to this statement, is one of the world's greatest potential arteries of transportation in the world. The *Statistical Abstract of the United States* shows that in the year 1968 alone the federal government expended $1,275,000,000 in developing this system. The total carrying capacity of the railroads, highways, air lines, pipelines and other transportation agencies combined is grievously inadequate to carry efficiently and expeditiously the present and burgeoning production of this country. The inland waterways themselves are being used only to about 25 percent of their ultimate capacity and are an absolutely basic essential to an efficient system of physical distribution in our nation.

Therefore, in the interest not only of Bowaters and the Southern Paper Manufacturers Traffic Conference, but in order to achieve full development of the national economy it is, I sincerely feel, essential that this committee and the Congress enact into law H. R. 8298.

Senator HOLLINGS. Mr. Matt Triggs, the assistant legislative director for the American Farm Bureau.

We welcome you, sir.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Good morning, Mr. Chairman and members of the committee and staff members.

The American Farm Bureau Federation respectfully recommends that the committee approve the amendment to H.R. 8298 presented by preceding shipper witnesses.

I have specific reference in this connection to the amendment proposed by Mr. Stockton for the National Industrial Traffic League.

Other witnesses have proposed other alternatives: The original language of S. 1314 as reported by this committee; the original bill H.R. 8298; the Ancher Nelsen substitute. We'd support any of these. They differ in language and to some extent in specific concepts, but the approval of any of these alternatives would delete the provision of H.R. 8298 which would require inland water carriers to file rates for hauling dry bulk commodities. And we'll be happy to take any road that will get us to this objective.

This provision of H.R. 8298, the filing requirement, was not sought by shippers. Shippers of dry bulk commodities supported the language of H.R. 8298 before the filing requirement was added to the bill.

We believe the rate filing requirements would not serve the interests of shippers or the public interest. The circumstances inherent in the inland water carriage industry are such that competition adequately serves and more effectively serves the public interest and the interest of shippers than regulation.

Rate filing would substitute one-party ratemaking for two-party bargaining—and thereby in our opinion substantially reduce competition as a ratemaking factor.

In its present form we believe H.R. 8298 is an antishipper, anti-consumer measure.

Your favorable consideration of any amendment to eliminate the rate filing provision of H.R. 8298 and thus to maintain the long established competitive ratemaking procedures in the inland water carrier industry is respectfully recommended.

Unless the bill is so amended, we recommend the bill not be approved.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you very much, Mr. Triggs. We appreciate your appearing here.

The next witness is Mr. Bernard L. Adomeit, vice president and general manager, Illinois Grain Corp., of Bloomington, Ill.

STATEMENT OF BERNARD L. ADOMEIT, VICE PRESIDENT AND GENERAL MANAGER, ILLINOIS GRAIN CORP., BLOOMINGTON, ILL.

Mr. ADOMEIT. I am Bernard L. Adomeit, vice president and general manager of Illinois Grain Corp. More importantly, I am a director and representative of the National Federation of Grain Cooperatives appointed by their board along with the executive vice president, Mr. Glen Hofer, who is here today, to speak for the National Federation of Grain Cooperatives on this matter.

The factual background I submitted in written testimony I ask to be made part of the record.

Senator HOLLINGS. It will be.

Mr. ADOMEIT. It pertains to Illinois. The conclusions are endorsed by the National Federation of Grain Cooperatives.

I intend in my informal remarks now to expand on the written record submitted to emphasize the total interest not only in the bill you are considering but the basic interest in the principles applied in their effect on farmers throughout the Nation if the precedents inherent here are carried into other forms of transportation.

Competition, inventiveness, and innovation have been fostered by the water transportation industry in their drive for increased service, and costs have not followed the inflationary trend of other forms of transportation. The most efficient carriers thereby reduce costs for the farmer, and the least efficient are pressed to introduce innovative techniques that have in the course of time resulted in a viable, aggressive water transportation industry.

We are concerned with the proposed rate publishing techniques which may very well result in rates that gravitate to those of the least efficient carrier and reduce the drive we have experienced that has served the farmer, the barge companies, and the consumers in progressive water transportation methods.

To illustrate the area we represent, Illinois Grain is affiliated with the Illinois Agricultural Association, the Farm Bureau in Illinois, with approximately 190,000 State farmer members. We are also affiliated with FS Services, Inc., a large supply cooperative serving farmers in Illinois, Iowa, and Wisconsin. Feed and fertilizers require close attention in the use of water transportation. There are 300,000 Farm Bureau members in these three States.

Illinois Grain is a majority stockholder of St. Louis Grain Corp. which ships a substantial number of barges. Joint owners with us are the Missouri Farmers Association of Columbia, Mo., and the Farmers Union Grain Terminal Association of St. Paul operating in Missouri, Minnesota, South Dakota, North Dakota, and Montana.

Additionally, seven large regional cooperatives have formed the Farmers Export Co. which owns and operates a large, modern grain terminal in the New Orleans district.

This company serves farmers contiguous to waterways all the way from New Orleans northward on the Mississippi, Arkansas, Tennessee, Ohio, Missouri, and Illinois Rivers. In fact, all of the vast middle U.S. system of water transportation.

These affiliates are also opposed to the rate filing amendment.

The National Federation of Grain Cooperative members are composed of 19 grain marketing regional cooperatives from Portland, Oreg. to Baltimore, Md., and from Minneapolis-St. Paul to Corpus Christi, Tex. The large number of farmers who own these cooperatives regard transportation as one of the most important critical facets of marketing, where any raise of rates is immediately reflected in reduced gross and net income of the individual farmer.

This is, therefore, a nationwide point of interest spreading beyond the waterways system.

Rate filing for nonregulated commodities in the bulk commodity exemption originally applied by Congress in the formulation of the Interstate Commerce Commission can spread beyond the confines of the waterways belt.

We would like to again bring up the bill reported out by this committee in 1967, S. 1314, which simply cured the question of allowing barge tows to be made up of various commodities just as the railroads make up trains and allowed the efficiencies practiced up until that time to continue. The amendment of rate filing is in our opinion an appendage not in keeping with the original congressional mandate to the Interstate Commerce Commission to administer the basic law to provide the total users of transportation, which include our total population, in a manner to promote efficiency and public welfare.

Incidentally, I didn't know that Mr. Hershey was going to be here this morning, I might add that Mr. John Creedy who is executive secretary of the Water Transportation Association came to Illinois some 2 years ago and asked my company's support of the original H.R. 8298 which is S. 1314 without any rate filing requirement mentioned at that time. He was accompanied by Mr. F. Meckling of the Meckling Barge Line, a regulated carrier, who also asked the same support. We went on record to the House of Representatives at that time to support the original precepts of S. 1314.

Senator HOLLINGS. We have got your record and your statement, Mr. Adomeit. We appreciate it very much.

(The statement follows:)

STATEMENT ON BEHALF OF THE NATIONAL FEDERATION OF GRAIN COOPERATIVES BY BERNARD L. ADOMEIT, VICE PRESIDENT AND GENERAL MANAGER, ILLINOIS GRAIN CORP., BLOOMINGTON, ILL.

My name is Bernard L. Adomeit. I am Vice President and General Manager of Illinois Grain Corporation. Our general office is located at 1701 Towanda Avenue, Bloomington, Illinois 61701, and the Board of Trade Building, 141 West

Jackson Boulevard, Chicago, Illinois 60604. Illinois Grain Corporation is a Grain Cooperative serving its member owners throughout Illinois. These members consist of 240 Cooperative Grain Companies.

Illinois Grain Corporation operates river houses at Morris, Illinois; Hennepin, Illinois; Lacon, Illinois; Creve Coeur, Illinois; Havana, Illinois; Naples, Illinois and a Gulf elevator located at Tampa, Florida. Illinois Grain Corporation also owns 55 percent of St. Louis Grain Company, who operate two terminal elevators in the St. Louis, Missouri area, one of which is on the river.

In fiscal June, 1969 through May, 1970, Illinois Grain shipped 1,035 barges of grain, each consisting of from 45,000 to 50,000 bushels. Most of this tonnage went to the Gulf, but a small percentage did terminate inland for domestic use.

Because of the large volume of grain barged by Illinois Grain, we are vitally interested in the legislation before this Committee. H.R. 8298 now is unacceptable to us. Rate filing is regulation and as the bill now stands, will impose an undue restriction on both common carrier regulated barge lines and nonregulated carriers.

Illinois agriculture will certainly suffer if legislation cannot be written that will allow unregulated commodities such as grain and fertilizer to move on the rivers in tows that contains regulated commodities such as iron and steel, sugar and automobiles.

Illinois farmers, and all farmers, need to be extremely flexible when marketing their products. To add the burden of filing rates and tariffs to certain river carriers will reduce this flexibility and certainly will result in higher transportation costs and lower returns to farmers. For instance, if the so-called unregulated carriers were forced to file rates and tariffs, we foresee many such rates being filed. These rates when filed could range from high to low. You may be sure, however, that the low rates would soon gravitate upward to the level of the higher rates posted.

The requirement for rate filing which is now attached to the barge mixing issue in H.R. 8298 has literally become the primary center of interest in this legislation. The requirement that all carriers file rates with the Interstate Commerce Commission on all dry bulk commodities as the price to permit regulated common carriers by water to mix their cargoes has unfortunately become the focal point for an attack on so-called secret rate-making by water carriers who are allowed to transport only dry bulk unregulated commodities, i.e., grain, coal, fertilizers. The claim is made that such co-called secret rates lead to higher prices that must be borne by the ultimate consumer. The fact is that the consumers of this transportation service are solidly opposed to H.R. 8298 and in solid support of an amendment offered by Ancher Nelsen as a substitute which clarifies the rate filing provisions. It would be strange, indeed, that legislation should be adopted on the guise of helping the consumer when the consumer is solidly opposed to the legislation as now written in H.R. 8298. The rates attacked as "secret" are the product of competitive-arms-length negotiations between the user and potential providers of transportation services. The low level of rates for water transportation of dry bulk commodities reflects the vigor of price competition among numerous water carriers seeking to transport various movements of such commodities.

It is a well-known fact that vigorous competition among water carriers is the heart and muscle of why we have the extensive use of water transportation in the United States which has stimulated agriculture and industrial growth along our water channels and created the great economic assets we have in our inland ports, as well as in most of our coastal ports.

Senator HOLLINGS. We will now hear from Mr. James R. Scoggin, vice president of Peavey Co., on behalf of National Grain & Feed Association.

STATEMENT OF JAMES R. SCOGGIN, VICE PRESIDENT, TRAFFIC, PEAVEY CO., MINNEAPOLIS, MINN., ON BEHALF OF NATIONAL GRAIN & FEED ASSOCIATION

Mr. SCOGGIN. Mr. Chairman, I am James R. Scoggin. I am vice president, Traffic, for Peavey Co., a grain and grain products merchandiser and shipper, headquarters at Minneapolis, Minn.

I appear here on behalf of National Grain & Feed Association. Our association consists of 1,300 members ranging in size from the smallest country elevator to the largest commercial grain and feed complexes including processors. Affiliated with the national association are 51 State or regional associations.

As shippers and receivers of grain, our members are vitally interested in the inland waterways of this Nation, for we use them extensively to move grain from areas where it is produced to points where it is needed. Surely no one needs to be reminded of the vast tonnages of corn, wheat, and other grains which move from the farms in Kansas, Indiana, Illinois, Iowa, Minnesota, the Dakotas, Montana, Washington, and many other States through commercial marketing channels on to barges on the Mississippi, Tennessee, Ohio, Illinois, Missouri, and Columbia River systems or on our other great waterways so as to export elevators along the gulf or the Pacific Northwest or elsewhere, or to flour mills or other processing plants, which have been built up along the waterways.

These are highly important arteries of commerce. They are of great importance to grain producers and to consumers, for they constitute by far the lowest cost method of moving grain. Their use adds substantially to the value of grain even at producing origins deep within the continent.

Because of the fact that waterways offer by far the lowest cost means of transportation, and because transportation costs are so significant in grain commerce, these waterways serve as means of reaching markets which might not be reached at all.

Waterborne grain traditionally and almost invariably moves as a bulk commodity under the exemption contained in section 303(b) of the Interstate Commerce Act. Its movement has always been at rates which are negotiated with competitive exempt carriers and reflect the influence of the supply of, and the demand for, water transportation on a day-to-day basis.

This pricing system works well and is well suited to the grain trade. It allows the transportation price to be determined as low as is consistent with the fiscal requirements of the water carriers. It is completely flexible and adaptable to the changing conditions of our commerce. It has, we are convinced, allowed the waterways to develop as fully as they can to serve our trade to our mutual advantage and in the national interest.

When the WC–5 proceeding before the Interstate Commerce Commission and in the courts finally determined that the combination of barges of grain as a bulk commodity with barges of nonbulk commodities subjected the entire tow to the regulatory process of the Interstate Commerce Act, we were of the opinion that the decision, while perhaps good law, was poor economics. The regulated water carriers have operated mixed tows freely on the waterways, first in what proved to be the mistaken belief that it was legally permissible. They still operate them pursuant to the Interstate Commerce Commission announcements that it would grant a stay of execution of the WC–5 decision.

It seems to us only sensible that regulated water carriers should continue to have the flexibility and the efficiency of freely mixing their tows, and that any effort to require segregated tows would serve no valid economic purpose and would be contrary to the public interest

in having for-hire transporters operate as economically as they can.

While railroads urge a prohibition against barge mixing, this appears to us to be an effort to profit by imposing artificial, meaningless handicaps on their competitors which we believe to be an unworthy goal.

Furthermore, any diminution of waterborne traffic would compound the freight-car shortage problem with which this committee has been so concerned over the years.

Thus, the first tenet of our position is that it is in the public interest in fostering sound economical for-hire transportation systems to legislatively repeal the WC–5 decision and to allow the section 303(b) exemption to continue to apply within its terms to bulk commodities, even when they are mixed in tows with commodities as to which Interstate Commerce Commission economic regulation applies.

This is what we had hoped would have happened in the House of Representatives. We were very deeply disappointed, however, Without hearings and without any opportunity for public expression of views on the rate filing aspects, a bill was passed which would allow mixing, but only at a price which we think the Nation can ill afford to pay.

The exempt water carriers (which by definition are not involved in operating mixed tows) would suddenly become burdened with the requirement that their rates must become fixed and unchangeable at least 30 days in advance of any move and must be filed with the Interstate Commerce Commission together with other undefined information which that body may demand of it.

I would say, Mr. Chairman, that Mr. Hershey this morning spoke of some possibility of trying to persuade the Commission, in special circumstances, to allow rates to be published on short notice in less than 30 days. While I have not had any experience as to water carriers in this connection, I have had a good deal of experience with rail carriers trying to persuade the Commission to allow rates to be published on short notice, and I would like to say that it is no simple matter when you present a case to the Commission based upon a competitive situation that you say requires short notice. Right now the Commission very frequently denies it and requires that the statutory period remain in effect.

No rate bureau or joint publishing agent procedure would be allowed. Such carriers—that is, the exempt carriers—which are the backbone of our waterborne commerce, and which have nothing to gain by mixing, would suddenly be required to stop being flexible, bureaucratically unhampered and competitive offerers of transportation services designed to fit the freight market circumstances of the day. Their ability to respond to supply and demand in setting day-to-day prices would be unnecessarily severely restricted. Their financial burden in complying with whatever rate filing and information gathering requirements the Interstate Commerce Commission might set would undoubtedly be passed on to us.

We have to conclude that their transportation services under this sort of regulation would become more costly, and this higher cost would inevitably be reflected in lower grain values, or restricted markets, or both, in the grain-producing regions.

We have no hesitation whatsoever in stating that the rate information filing provisions of the House-passed bill, by placing so many

of the burdens and inflexibilities of regulation upon our presently exempt water carriers, far outweighs in its adverse effects any benefits that allowing regulated water carriers to mix might bring about.

Thus, the second tenet of our position is that we object very much to the rate and information filing provisions of the House-passed bill.

We would support and urge you to approve for passage a bill amended so as to do nothing more than to repeal the effect of the WC–5 decision and, thus, allow mixing. However, we must oppose the House-passed bill before you, and urge you not to recommend its passage.

While a properly amended bill would be our first choice, if it is necessary to choose between the House-passed bill with all of its objectionable features and no bill at all, we would have to urge that there be no bill at all.

Thank you.

Senator HOLLINGS. Thank you very much, Mr. Scoggin. We appreciate your appearance here.

We will next hear from Mr. Vescelius from the Olin Corp. on behalf of the Manufacturing Chemists Association.

STATEMENT OF C. H. VESCELIUS, ON BEHALF OF MANUFACTURING CHEMISTS ASSOCIATION

Mr. VESCELIUS. Mr. Chairman, my name is C. H. Vescelius. I am professionally employed by a major chemical company as its director of transportation. I am appearing on behalf of the Manufacturing Chemists Association (MCA) in opposition to the proposed legislation H.R. 8298 and in support of the amendment proposed by the National Industrial Traffic League.

MCA is a nonprofit trade association of 169 U.S. member companies representing more than 90 percent of the production capacity of the basic industrial chemicals within this country.

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 located many of their plants along rivers because of the low costs and high efficiency of water transportation. For example, 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 fundamental purpose of H.R. 8298 was to make lawful the practice of mixing unregulated dry 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 30 years.

MCA supported the original version of the bill which did not carry any provisions for the filing of rates. We are opposed to a requirement for filing of rates. In my own company's case—believed to be typical of the industry—only a small percentage of our total tonnage finds its

way into mixed tows. Hence, this bill would impose a rate filing requirement on a preponderance of total tonnage which will never see a mixed tow. Large volumes of chemicals are shipped in barges in dedicated service, carrying but a single commodity.

As an important shipper by rail and highway, as well as water transportation, the chemical industry needs a healthy national transportation system on a national scale. The bill as passed by the House on August 12, 1970, will not, in our opinion, contribute toward this goal. On the contrary, it will destroy the flexibility and service we require.

The growth of our present service is due mainly to the exercise of free competition. The carriers involved, represented by the American Waterways Operators, stand shoulder to shoulder with the consumers of the services they offer in opposing the publishing of rates. The fact that the great majority of those involved in the provision and use of services are in complete agreement should indicate that the traditional exemption should continue without the necessity of filing rates.

Therefore, we urge favorable consideration of the amendment proposed by the National Industrial Traffic League which would preserve the original intent of the legislation to permit mixing of dry bulk and nonbulk commodities without imposing burdensome and unnecessary regulation which would add to the expense of the consumer.

Mr. Chairman, that completes the statement of the MCA, but if I may, just for a moment, take off my MCA hat and speak as an individual shipper——

Senator HOLLINGS. Yes, sir.

Mr. VESCELIUS (continuing). And prompted by a witness for the American Institute of Merchant Shipping I believe it was, I'd like to leave this thought with you:

They have asked and, in my opinion, rightfully so, for an exemption on manned vessels coastwise and I suppose across the gulf, and I'd like to draw the committee's attention to the fact that there is a new technology developing, and it's coming a long way and has come a long way to us unmanned barges of rather large size which are either towed or pushed, in many cases pushed, coastwise and cross gulf.

These ships or barges carry about the same tonnage as the manned vessels, and it would seem to me that you'd have an inequality if you were to exempt the manned vessels and not make some provision for the unmanned barges.

Now, I don't mean to have you understand in anyway that this changes my testimony. It does not. We are definitely opposed to this bill. But that seems to me to just create one more inequality, Mr. Chairman.

Senator HOLLINGS. Am I understanding correctly, Mr. Vescelius, that self-propelled oceangoing should be included?

Mr. VESCELIUS. No——

Senator HOLLINGS. Mr. Reynolds——

Mr. VESCELIUS. As I understand the American Institute of Merchant Shipping provision, they would include a clause in the bill which would exempt their manned vessels in coastal waters or cross gulf, for example. I only point out that there are also large barges which are not self-propelled and, therefore, would be different and yet they compete with each other.

Senator HOLLINGS. We appreciate your appearance. Thank you very much.

Mr. VESCELIUS. Thank you.

Senator HOLLINGS. Mr. D. L. Campbell Kerr of Freeport Sulphur.

STATEMENT OF D. L. CAMPBELL KERR, GENERAL TRAFFIC MANAGER, FREEPORT SULPHUR CO., ON BEHALF OF THE FERTILIZER INSTITUTE

Mr. KERR. Mr. Chairman, the testimony that I am to give will be in opposition to H.R. 8298 as it was passed by the House and in favor of the bill H.R. 8298 amended as was proposed by Mr. Stockton of the National Industrial Traffic League.

The Fertilizer Institute is against the inclusion of the rate filing provision.

My name is D. L. Campbell Kerr, general traffic manager, Freeport Sulphur Co. I appear on behalf of the Fertilizer Institute, a voluntary nonprofit trade association representing some 400 member companies comprising approximately 80 percent of the firms engaged in mining, processing, and manufacturing fertilizer ingredients and equipment.

The fertilizer industry includes many major shippers by water, both on the inland waterways and offshore, of fertilizer and fertilizer material. The extent of this commerce may be judged from these statistics—

If I may, I'll turn the page of my prepared statement and read 20 million tons of fertilizer materials per year.

The vast majority of these fertilizer movements takes place in bulk, and has always been exempt from the rate filing and regulatory requirements of the Interstate Commerce Act.

The Fertilizer Institute opposes H.R. 8298 in the form in which, without hearings, it was passed by the House on August 12, 1970. We support the position taken and the amendment proposed by the National Industrial Traffic League.

We testified in 1967 and 1969 before the House committee and this committee on H.R. 8298 and its predecessors. In its present form, H.R. 8298 goes far beyond the original purpose. That was to permit the mixing of dry bulk and nonbulk commodities in one tow and, therefore, to hold down the cost of transportation. Our testimony favored that.

As passed by the House, however, H.R. 8298 will increase the cost of transportation. It will do this by requiring the filing of rates on dry bulk commodities, which will inevitably remove the one factor of free market competition that has produced a healthy barge industry as well as low transportation costs.

I say this because in my experience in transportation, which reaches back to 1928, the effect of regulation or rate filing has typically been to increase the shipper's cost of doing business. The filing of rates, even an exchange of knowledge of rates, tends to immobilize them at a higher level.

We believe that this legislation focuses attention only upon the interests of the water carriers and the railroads. When the bill was

broadened from a mixing rule bill that would provide great economic advantage to water carriers and shippers alike to a bill that provides for the filing of rates, it ignored the interest of all of the consumers of transportation—efficient service at low cost.

We use all kinds of transportation and do not favor nor wish to favor one above the other. We do wish to direct the attention of this committee back to the intended ultimate beneficiaries of this legislation and of all transportation legislation, the shippers and consumers, who are in this case the farmer and the housewife.

This legislation originally had nothing to do with the filing of rates for dry bulk transportation, and should not be used as a vehicle to require such filing. If it is now desired to make a revolutionary change in the carefully considered choice of the Congress in enacting the Transportation Act of 1940, then it should not be made without full hearings so that all concerned might have ample opportunity to testify. After all, it would be a change in a practice that has existed from before the birth of this republic.

The amendment proposed by Mr. Stockton in his testimony for the National Industrial Traffic League would return to the original purpose of the legislation—namely, to permit the mixing of dry bulk and nonbulk commodities, with resulting improvement in efficiency. We urge the committee's favorable consideration of that amendment.

Senator HOLLINGS. Thank you very much, Mr. Kerr. We appreciate your appearance.

Mr. KERR. Mr. Chairman, may I add another comment?

Senator HOLLINGS. Certainly.

Mr. KERR. I heard Mr. Vescelius speak of the testimony of I believe Mr. Reynolds. My company has a contract to move phosphate rock across the Gulf from Tampa to the New Orleans area. It does so in barges that carry 26,000 tons of phosphate rock each.

In order to reach a contract for that kind of transportation, we carry on what have been described as arm's-length negotiations. The barges are not self-propelled. They have a notch in the stern and are pushed by very expensive, high-powered towboats.

That type of ocean transportation should be treated in the same manner as is self-propelled vessel type.

Senator HOLLINGS. I understand.

Mr. KERR. Thank you.

Senator HOLLINGS. I have seen those.

Thank you very much. We appreciate it.

(The statement follows:)

STATEMENT OF D. L. CAMPBELL KERR ON BEHALF OF THE FERTILIZER INSTITUTE

I am D. L. Campbell Kerr, General Traffic Manager, Freeport Sulphur Company. I appear on behalf of The Fertilizer Institute, a voluntary nonprofit trade association representing some 400 member companies comprising approximately 80 percent of the firms engaged in mining, processing, and manufacturing fertilizer ingredients and equipment. The fertilizer industry includes many major shippers by water, both on the inland waterways and off-shore, of fertilizer and fertilizer material. The extent of this commerce may be judged from these statistics:

In 1968, the latest year for which figures are available, the following tonnages of fertilizer, fertilizer material, and fertilizer ingredients moved by water in domestic commerce:

Commodity:	Tons
Phosphate rock	4,762,541
Natural fertilizer materials, n.e.c	99,310
Sulphur, dry	100,828
Sulphur, liquid	8,484,747
Sulphuric acid	3,384,272
Nitrogenous fertilizer and fertilizer materials, manufactured	1,047,105
Potassic fertilizer materials	312,050
Superphosphate	686,633
Fertilizers and fertilizer materials, n.e.c	1,528,229
Total	20,405,825

Source: Department of the Army, Corps of Engineers, "Waterborne Commerce of the United States," part 5, table 10—domestic barge traffic: Commodity by type of traffic, at 33–35 (1968).

The vast majority of these fertilizer movements takes place in bulk, and has always been exempt from the rate filing and regulatory requirements of the Interstate Commerce Act.

The Fertilizer Institute opposes H.R. 8298 in the form in which, without hearings, it was passed by the House on August 12, 1970. We support the position taken and the amendment proposed by the National Industrial Traffic League.

We testified in 1967 and 1969 before the House Committee and this Committee on H.R. 8298 and its predecessors. In its present form, H.R. 8298 goes far beyond the original purpose. That was to permit the mixing of dry bulk and non-bulk commodities in one tow and therefore to hold down the cost of transportation. Our testimony favored that. As passed by the House, however, H.R. 8298 will increase the cost of transportation. It will do this by requiring the filing of rates on dry bulk commodities, which will inevitably remove the one factor of free market competition that has produced a healthy barge industry as well as low transportation costs.

I say this because in my experience in transportation, which reaches back to 1928, the effect of regulation or rate filing has typically been to increase the shipper's cost of doing business. The filing of rates, even an exchange of knowledge of rates, tends to immobilize them at a higher level. We believe that this legislation focuses attention only upon the interests of the water carriers and the railroads. When the bill was broadened from a mixing rule bill that would provide great economic advantage to water carriers and shippers alike to a bill that provides for the filing of rates, it ignored the interest of all of the consumers of transportation—efficient service at low cost. We use all kinds of transportation and do not favor nor wish to favor one above the other. We do wish to direct the attention of this Committee back to the intended ultimate beneficiaries of this legislation and of all transportation legislation, the shippers and consumers, who are in this case the farmer and the housewife.

This legislation orginally had nothing to do with the filing of rates for dry bulk transportation, and should not be used as a vehicle to require such filing. If it is now desired to make a revolutionary change in the carefully considered choice of the Congress in enacting the Transportation Act of 1940, then it should not be made without full hearings so that all concerned might have ample opportunity to testify. After all, it would be a change in a practice that has existed from before the birth of this republic.

The amendment proposed by Mr. Stockton in his testimony for the National Industrial Traffic League would return to the original purpose of the legislation, namely to permit the mixing of dry bulk and non-bulk commodities, with resulting improvement in efficiency. We urge the committee's favorable consideration of that amendment.

[From the Journal of Commerce, Oct. 1, 1970]

CANADA SETS GAS PRICE REVIEWS

OTTAWA, Sept. 30—The Canadian government—with something like a seller's market for natural gas in the U.S.—adopted the "canny" approach of requiring future price reviews of export prices in giving approval to the 6.3 trillion cubic feet in gas exports Tuseday.

At Tuesday's press conference, Energy Minister J. Greene noted that the governor-in-council had made new regulations under Section 85 of the National Energy Board Act providing for such reviews.

"The government," he said . . . "considers that the price arrangements should be such as to call for a review should there be a significant increase in prices in the United States market for competing gas supplies or for alternative energy sources. . . .

"The National Energy Board will keep under close review the adequacy of pricing arrangements under contracts for the export of gas, and the report of the board arising from such review will be considered by the government in determining appropriate action."

'SHOULD REFLECT VALUE'

The minister also said that "the government considers that in all circumstances the prices being received for export gas should reasonably reflect its value in the market in which it is used, including the recovery of all the costs of providing the service. Further, the prices to comparable Canadian distributors should be at least as low as those at which gas is exported."

His announcement came at a time when predictions are current in the U.S. of an increase in wellhead prices for natural gas by year end, in the light of America's present "screwtight" gas supply situation.

This situation was mentioned in the NEB's report on the gas applications. However, it points out that the Federal Power Commission had approved applications before it corresponded to four of the five export applications before the NEB, accepting the price and other arrangements proposed by the applicants.

The report added: "Though there exists at the moment something like a seller's market, it is necessary to keep in mind that at some point there is a ceiling on the price which will be paid in the United States for natural gas imported by pipe line whether that cost is expressed in the cost of developing additional indigeneous gas, gassifying coal, or importing liquefied natural gas from overseas."

In cutting down permissible exports to 6.3 trillion cubic feet from the requested total of 8.9 trillion cubic feet, the government accepted the NEB's finding that the historical rate of finding new gas reserves of 3.5 trillion cubic feet a year would not be sufficient to permit approval of all the export license applications "for the full quantities and time periods requested and provide adequate protection for the future requirements of Canada."

RESERVES DEFICIENCY

In fact, the National Energy Board calculated that if the 8.9 trillion cubic feet in requested exports were granted there would be a current deficiency of available reserves in Canada of 2.5 trillion cubic feet. Even with the addition of future reserves, the annual growth rate required would be unsupportable.

The effect of the decisions in that Alberta and Southern Gas Co. Ltd. gets a license to export the daily and annual volume specified in its application but for a period of 15 years rather than the 23 years sought. This means reducing the term volumes from 1,592 billion cubic feet to 1,038 billion cubic feet.

Canadian-Montana Pipe Line Company gets a license to export the volumes specified but for a period of 15 years, instead of 23 years, and the term volumes are reduced from 86 billion cubic feet to 56 billion cubic feet.

Three licenses are issued to Trans-Canada to export the daily and annual volumes specified but for a period of 20 years, instead of 25. The term volumes are reduced from 2,336 billion cubic feet to 1,872 billion cubic feet.

A license is issued to Westcoast Transmission Co. Ltd. to export 75 million cubic feet per day for a period of 20 years and a second combined license which incorporates, effective Nov. 1, 1971, the aforesaid license as well as Westcoast's two existing licenses. The combined license is for the full 18 years sought by Westcoast.

The total incremental export volumes authorized by the two licenses are, as in the application, 3,329 billion cubic feet.

Also certificates of convenience and necessity are issued to Alberta Natural Gas Co., to Trans-Canada, and Westcoast to construct additional pipeline facilities. These do not include those already approved.

The National Energy Board did not approve the applications of Consolidated Pipe Lines Company and Consolidated Natural Gas Ltd. on the grounds that "Where a choice has to be made between licensing exports by a project wholly oriented to export and a project which serves Canadian customers and export customers, if all other factors were equal the choice would have to be made in favor of the project serving Canadians as well as export customers."

EXPLORATION, DISCOVERY

Mr. Greene's statement also referred to the dependence of exploration and discovery on adequate markets for oil and gas both in Canada and the United States.

"The government, he said, has also noted that the most efficient and economical production and marketing of Canadian natural gas is directly related to the existence of adequate foreign and domestic markets for the by-products of such production natural gas liquids and sulphur."

The government had proceeded in the expectation that access to United States markets for such by-products would not be impeded by quantitative restrictions, and "that access for Canadian oil to the United States will be satisfactory.

"The Canadian government, in its efforts to encourage the further processing in Canada of Canadian resources, will continue to urge upon the United States the need for improved access to that market for Canadian production of chemicals and other petroleum and natural gas based products."

The ministers also noted the NEB's stricture that the price at which Trans-Canada exports gas of Emerson, Manitoba must at all times be at least 105 percent of the price of Canadian distributors in Manitoba. As in the case of Trans-Canada, the Westcoast Transmission license provides that exports to be made under the new contract be also priced at not less than 105 percent of the price to the British Columbia distributor serving the lower B.C. mainland.

[From the Journal of Commerce, Oct. 1, 1970]

U.S. FERTILIZER INDUSTRY NOW STARTING TO MOVE INTO BLACK

(By Al Wyss)

The chemical fertilizer industry with total sales of over $3 billion, from all indications is moving into the black after several years of lagging sales, overproduction, declining prices and earnings.

Shipments are rising and a firmer tone is evident in basic fertilizer prices. Tonnage shipments of chemical fertilizers—nitrogen, phosphate and potash based materials—are expected to rise about 5 percent this year and again in 1971. Moreover, leading producers, including many of the largest chemical and oil companies—have taken positive steps to cut costs and streamline marketing operations.

But producers still are faced with difficult problems and have a long way to go before they get earnings back to levels which show an adequate return on investment. This is clearly indicated by the first financial survey on chemical fertilizer operations in the history of the industry.

LEAN YEAR FOR INDUSTRY

Called "Fertilizer Financial Facts," the first report was just issued by The Fertilizer Institute and showed that 1969 was an extremely lean year for the U.S. industry. The 29 basic fertilizer producers participating in the survey suffered a total net loss in 1969 of about $70 million on total net sales of $1.6 billion.

The industry will be facing tough problems next year because of shortages of natural gas, as well as rail cars and tank trucks.

These points were underscored by Edwin M. Wheeler, president of The Fertilizer Institute in an interview with The Journal of Commerce in which he discussed the new Fertilizer Financial Facts service and the related problems and prospects for the industry.

Mr. Wheeler said that the industry should definitely be in the black this year as a result of the good spring season. This is likely to be reflected in the next printout of Fertilizer Financial Facts in November, which will cover the fiscal year ending June 30, 1970.

Tonnage shipments for all fertilizer materials are likely to rise 6 percent for fiscal year ending June 30, 1970 and a further pickup in tonnage of about 5 percent will be seen in 1971, Mr. Wheeler believes.

TIGHT SUPPLY

And in the spring of next year anhydrous ammonia, a basic chemical material, could be in tight supply for two reasons, Mr. Wheeler said. This will result because of production cutbacks in natural gas, used in ammonia production, and also because transportation facilities will be insufficient, he added.

There is a serious lack of service, and tank cars as well as tank trucks, including an insufficient supply of drivers for tank trailers, Mr. Wheeler pointed out.

The long depressed condition of fertilizer markets resulted from substantial overproduction in the basic chemical raw materials, including phosphate, potash and nitrogen or ammonia. But a more stable situation is finally developing and the action of the Canadian Government in pegging prices and prorating production without question helped to stiffen prices for all fertilizer materials, Mr. Wheeler said.

The Canadian Government last Jan. 1 pegged the price of potash at $18.75 a ton, f.o.b. Saskatchewan and prorated production at slightly less than 50 percent of name-plate capacity at the mines.

BROUGHT HOME

The loss of about $70 million suffered by the 29 basic fertilizer producers participating in the institute's financial survey underscores the hard fact that manufacturers have for some time just not been generating enough dollars for the tonnage moved. Prices of chemical fertilizers for a few years through last spring, in fact, appeared to be sinking in quick sand. Meanwhile costs of all types were going up steadily.

The price of anhydrous ammonia, for example, fell from a high of 114 per ton reached several years ago to a level of about $60.00 per ton.

The depressed prices of fertilizers are reflected in the substantial loss shown by basic producers in the institute's "Fertilizer Financial Facts" report. A number of other weak spots in operations also are indicated in the report. It is expected that participating chemical and oil companies will be able to compare their own operations with the industry average and take corrective action where necessary.

The first report, covering calendar year 1968, was divided into two groups of fertilizer operations, designated as Group II and Group III. Group II involves companies that produce one or more nitrogen, phosphate and potash products and sell wholesale and/or retail.

GROUP III

Group III involves companies that are not basic producers of either nitrogen, phosphate or potash products but which buy from basic producers for resale at wholesale and retail levels. Data for Group I, which would involve companies that produce only potash, were not included because of insufficient reporting.

Total net sales of fertilizers and other products and services complementary to the fertilizer business were $1,616 billion, as noted above, for Group II and $150 million for Group III. Gross profits, as a per cent of total net sales were 10.8 for Group II and 17.8 percent for Group III.

In Group II, 29 companies provided data, representing sales of 50.8 million tons of fertilizer, 2.4 million tons of agricultural limestone and 17.5 million tons of phosphate rock.

In this group, earnings statements data show selling, general and administrative expenses amounted to 15.6 percent of total net sales. Research and development was 0.5 per cent of total net sales or $6.1 million. Advertising and promotion were 9.8 percent or $10.3 million.

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Important balance sheet items include an end-of-year inventory of fertilizer products valued at $297 million or 18.4 percent of total net sales.

Total assets used in ordinary fertilizer operations of reporting companies were set at $2.4 billion. Total net sales consequently amounted to only 70 cents on each dollar of assets.

On the basis of the participating companies' investment in total assets, they should have earned about $193,360,640. This amount was arrived at by taking the total asset value of all the companies, or $2,417,083,000 and multiplying it by 8 percent, which was the prime rate before the recent reduction to 7½ percent.

SOME FACTS AND FIGURES

Selected monthly data in the Financial Facts report show February as the high month for fertilizer inventory, with a valuation of $348 million and June as the low month, with inventory valued at $239 million. For net trade receivables, January was the "low" month with receivables totaling $398 million and May was the high month with receivables at $694 million.

The wholesale and retail sellers of fertilizers in Group III, which involved 18 participating companies, generally showed a better financial performance than the basic producers. With $150 million of total net sales, this group showed a 17.8 percent gross profit margin. This group also spent more on advertising than the basic producers but, as expected, spent less, or only 0.1 percent of total net sales, on research and development.

The Financial Facts report will be published on a biannual basis, once for the calendar year and once for the fiscal year, with the fiscal report as note due out about mid-November. The report was developed by the Controller Committee of the Institute and produced by Ernst & Ernst. In addition to the published report, each participating company will be provided with a confidential comparison on its data with industry.

Senator HOLLINGS. Mr. Jesse Brent, president, Brent Towing Co. in Greenville, Miss.

STATEMENT OF JESSE BRENT, PRESIDENT, BRENT TOWING CO., INC., GREENVILLE, MISS.

Mr. BRENT. Thank you, Mr. Chairman.

I do not have a statement. I really didn't have time to prepare one, but for the record I would like to subscribe to Ingram Barge Lines', Mr. John Donnelly's statement, and I would further like to make a few remarks here.

Mr. Chairman, I come from a town of 50,000 people, and we have 25 small towing companies operating out of Greenville, and I consider myself representing them because they are all 100 percent in agreement with my views on legislation.

We are all very small companies but jointly we represent the largest industry in Greenville as far as payroll and so forth, and we feel like that in the last Congress this Senate committee reported out a good bill, and as you know there was a stop put on it over in the Senate by, I think, Senator Lausche.

Anyway, then we held hearings over on the House side in this Congress on that same bill.

Now, the committee reported out an entirely different bill, and it was not just the rate filing amendment either. They did not eliminate the three-commodity clause which is a featherbedding thing which should have been eliminated long ago.

So to say that I would accept this bill with the rate filing amendment off is not exactly the way I feel. I think we should have had the bill that this full committee in the Senate reported out I understand unanimously.

And in the report they said this bill was a good bill on its own merit and let's get it passed and then we'll deal with the railroad legislation later.

So now we find us down to the wire, and I'm afraid to ask this committee to report this bill out with the rate filing amendment. We don't know what is going to happen when it gets on the floor of the Senate.

Now, I know this committee and the Senate doesn't want to do anything to hurt 500 or 600 small operators. But it's getting close to adjournment, and the chairman is, I understand, on the west coast. His wife is mighty sick. And I'm sorry about that. Mr. Hartke is down in his State politicking I suppose. I don't know what your situation is. But everybody up here is gungho to get home. And if this bill is reported out of this committee I don't think we have a chance, us little fellows, of getting the Senate informed as to our views and our problems.

And I would like to see this committee consider sending the original bill back to the House committee and give us another shot over there at those people.

Frankly, I'm not insinuating that these are not all smart men, but I don't think the full committee in the House, all of them, understood this bill.

It was the durdest hassle you ever saw over there, and you want to know how it got reported out with the rate filing amendment. We don't know either. Just like we don't know why they made us put the three-commodity clause back in there which the big barge lines need badly and we need it.

So my plea to you is let's don't rush this thing. Half of our people are in Chicago today, tomorrow, and the next day at another meeting. We have to schedule these meetings a year ahead of time in order to get hotel reservations. And if this committee—and I understand you are just going to hold these 1-day hearings? Is that correct, sir?

Senator HOLLINGS. We only have presently scheduled 1 day of hearings to complete this record. Of course, we have got the previous record. I may say that I have no concern about where your fellows will be if we reported it tomorrow morning. They'd be back down here.

Mr. BRENT. Yes, sir; I have been up here a lot.

Senator HOLLINGS. We don't want to create any hardship, and, of course, we're not taking a position. It's unfortunate many of the members here could not be present. Because we are into the short rules and closing days. But they are going to study this.

There is a good deal of concern on both sides, and all of us are concerned with the problem, and we have, of course, confronting us a court decision relative to the mixing rule and the Interstate Commerce Commission enforcement imminent on us at the present moment.

So it's something that can't be rushed but then must be acted on promptly as we see it. And we want to make a full record. And you are stating our problem which I am delighted to hear stated so cogently. You have taken into consideration Mr. Hartke's politics and everybody else's.

And I understand you have how many shippers in Greenville, Miss.?

Mr. BRENT. Well, shippers——

Senator HOLLINGS. I mean the barge operators.

Mr. BRENT. Twenty-six small companies, but jointly we are the biggest industry in Greenville. I have talked to my two Senators about this and like I say this is something you have got to sit down for hours and explain all this to a Senator in order for him to be informed.

I didn't mean it that way. No reflection on you,

This is even complicated to us. You saw right here today the deep sea shipping man come up here. There's a flaw in there; they didn't even know they had their tail in the crack.

So you see it is complicated. I think you'd be the first to agree with me there. And it has got a lot of ramifications.

And we all started out trying to get a good bill, and I don't know. I'm just not quite ready to settle for anything else. I believe this bill if people understand it, the Congress would pass it on its own merit. We only lost the Ancher Nelsen amendment by 11 votes in the House, so that shows you it wasn't all one-sided.

And I think the Nelsen amendment, was you might say, a compromise on our part, but it would have taken care of the big common carrier barge lines.

But I just hate to see us have to get under the wire here which I know the wire is not very far down the road, and I just hope that this committee will see fit to deliberate and go slow on it.

One other aspect has been brought out here that I would like to address myself to just briefly. I know we are in a hurry. This is in connection with the rate filing. And, you know, the discrimination, and so forth. Now, we little fellows and not many of the big boys are in any position to do any discriminating. A barge line is not a railroad.

Now, the gentleman back here representing the railroads, he might go up let's say in Union Carbide's 30-story building and tell the vice president of traffic that he's going to go up on their rates. But if I went up there and did that—and they're one of my good clients—I'd get thrown out their window.

I'm in no position and 500 or 600 of these little operators scattered all over the gulf coast and the inland system are in no position to dictate to anybody that we do business with in any shape, form, or fashion. If it's a big grain company and we're not doing a job for them, they can build their own towboats and their own barges. It's free entry.

And we're just not in a position where the Interstate Commerce and the Congress need to regulate us to keep us from taking advantage of the little fellow, because we're little fellows ourselves.

Senator HOLLINGS. Good, Mr. Brent. Thank you very much. I appreciate your appearance here this morning.

Mr. BRENT. All right, sir.

Senator HOLLINGS. Mr. Reeble of the Chauffeurs and Helpers Union.

STATEMENT OF STANLEY REEBLE, REPRESENTING KASKASKIA INDUSTRIAL DEVELOPMENT CORP.

Mr. REEBLE. Mr. Chairman, on slight correction. I don't represent the Chauffers Union as such: I am the spokesman for labor in southern Illinois concerning public works, and we are in the process of trying to build a navigation canal and we are pretty well underway.

I represent the Kaskaskia Industrial Development Corp. that spearheaded this drive.

I also am a director of the Kaskaskia Regional Port District.

Through none of these am I salaried. As you see me now, I receive no salary. I am strictly here on a good will basis.

Kaskaskia Industrial Development Corp. does pay my expenses, and they reimburse me for my loss of wages. I'm a wage earner. I'm not in any sort of business, no personal axes to grind, only trying to help the people.

So I am much concerned. I have watched this bill for quite a while, and we are worried about it. I would hope really that the Senate would turn this bill back completely. I can't see how the people would benefit by it as it is.

The manner in which it was handled on the House side is shameful.

I understand around the Hill this is considered a railroad bill. I can't see the the railroads spending their precious time trying to help the people. If they would I think they would be here lobbying for, you might say, social security.

But, anyway, I'm not salaried, as I told you. I'm trying to help the people. And the people's feeling is that this a not a good bill.

Now, you will be led to believe by some people that the AFL–CIO favor this bill, and I had heard this was a fact, and I was disturbed about that because I didn't know why they should be in favor. So I went to see the people in question. The National Building Trades Department hadn't even heard of the bill as it cleared the House. The operating engineers hadn't heard of the bill. The Chauffers hadn't heard of it. The Laborers' Union hadn't heard of it.

So these people were not in favor of the bill; they didn't even know it existed.

So the bill had a good beginning. Hearings on the original version of the measure proved that the mixing of regulated and nonregulated commerce on our inland waterways would be for the public good in that transportation costs would be kept low and even possibly lower.

The railroad association came along after hearings and in blatant show of power caused the bill to be changed so completely that we cannot find anyone for the amended bill except the American Association of Railroads and a handful of large regulated water carriers who handle less than 10 percent of the total tonnage all on the inland river systems.

While this handful of regulated water carriers are supporting the bill, they don't actually like it. They in effect have become the captives of the railroads in this struggle.

Now, this bill is not for the public good. The original author admits it. It is not as he intended. The hundreds of small nonregulated water carriers who haul 90 percent of the tonnage would become regulated and transportation costs would have to go up. The entire shipping fraternity is up in arms about it, the fertilizer, sand, gravel, grain, chemicals, coal, and every other.

All who ship by water are telling the same story. The nonregulated phase of water carriage is responsible for low-cost water transportation, and we have been doing it this way since 1939.

Mr. Chairman, I will have a written statement I would like to enter in the record if you please. I don't have it with me now.

Senator HOLLINGS. Your entire written statement, Mr. Reeble, will be accepted, and we appreciate it.

Mr. REEBLE. Thank you very much.

Senator HOLLINGS. We appreciate your appearance, too.

(The statement follows:)

STATEMENT OF STANLEY L. REEBLE, VICE PRESIDENT, KASKASKIA INDUSTRIAL DEVELOPMENT CORPORATION

My name is Stanley L. Reeble. I am Vice President of the Kaskaskia Industrial Development Corporation, with offices at New Athens, Illinois. The Kaskaskia Industrial Development Corporation is a civic group made up of labor, industry, farm organizations, business, chambers of commerce, and other groups interested in the development of the Kaskaskia valley. The organization is financed by donations from these groups. I am also the authorized representative of all the labor groups in southern Illinois affiliated with the AFL–CIO, as well as the United Mine Workers of America in Illinois.

A witness testifying before me, representing one phase of the Maritime Union stated that the AFL–CIO in its entirety supported H.R. 8298 as it is before you today. My investigations have proven this to be a false statement. Many of the members of the AFL–CIO were not even aware of the existence of this bill. After learning the language of this bill they were strictly and whole-heartedly against it. This is not a good bill for the people of the United States. It will be a deterrent to the continuance of low cost transportation on the Inland Waterway System. H.R. 8298 had a good beginning. Hearings on the original version of the measure proved that mixing of regulated and non-regulated commerce on our inland waterways would be for the *public good* in that transportation costs would be kept low and even possibly lower.

The railroad association came along *after* hearings and in a blatant show of power caused the bill to be changed so completely that we cannot find anyone for the amended bill except the AAR and a handful of large regulated water carriers who handle less than 10 percent of the total tonnage hauled on the inland river system. While this handful of regulated water carriers are supporting the bill, they don't actually like it. They in effect have become the captives of the railroads in this struggle.

Now the bill is *not for public good.* The original author admits it; it is not as he intended.

The hundreds of small non-regulated water carriers who haul 90 percent of the tonnage would become regulated and transportation costs would have to go up.

The *entire* shipping fraternity is up in arms about it—fertilizer, sand and gravel, grain, chemicals, coal and every other. All who ship by water are telling the same story—the non-regulated phase of water carriage is responsible for low cost water transportation and we have been doing it this way since 1939.

I would hope the Senate would turn back the bill because the manner in which it was processed in the House of Representatives was nothing short of a disgrace.

Once again I would like to state my opposition to H.R. 8298 as it stands today.

I appreciate and thank you for the opportunity to appear before you in this hearing today.

Senator HOLLINGS. Mr. John Mooty, secretary of the Upper Mississippi Towing Corp.

STATEMENT OF JOHN MOOTY, SECRETARY, UPPER MISSISSIPPI TOWING CORP.

Mr. MOOTY. Mr. Chairman, our company is an exempt for hire carrier which ships bulk commodities on the entire inland waterways system. We appear here today in opposition to amended H.R. 8298.

With the chairman's permission, I would deviate substantially in order to avoid repetition from what is in the statement.

Senator HOLLINGS. Your entire statement will be made a part of the record after you summarize it.

Mr. MOOTY. I would like to comment on some of the focal points that this discussion has seemed to center around.

The chairman initially indicated he desired the comments to be directed to the changes that have occurred since it was previously before this committee. And I think in that aspect that there are two areas. There are the deletions and there are the additions.

Now, as far as the deletions are concerned, they basically relate to the three-commodity rule and the 1939 date.

With reference to those two items, there has been no testimony before this committee today in opposition to either of those two inclusions. In other words, all the testimony has been in favor of the original bill that this committee looked at.

And, interestingly enough, even though, for example, the Maritime Trades AFL–CIO testified here in opposition to certain phases on the regulation point, their statement basically indicates the necessity for the three-commodity rule even though they talk in terms of no changes as far as the House version is concerned.

So that on those two points there seems to be no conflict at all in the testimony today that those matters that were deleted by the House should be placed back in the bill.

With reference to the additions which, of course, is a regulatory feature of the requirement of the publication of rates, it seems to me that the chairman directly put the question to Mr. Hershey as to whether this was necessary as far as the mixing rule was concerned, and the answer that was received was it was not necessary to get into the regulatory feature in order to solve the problem as far as the mixing rule.

In this respect I would like to comment on some of the points that have appeared.

First of all, there is not a single shipper that has appeared here today in favor of the publication of rates that has anything to do with the commodities that are now being moved in the exempt category. The only shipper that did appear on behalf of the southern paper group indicated that he wouldn't care if that particular provision were deleted. And, interestingly enough, in his text he seems to be talking basically in terms of the price advantage that exists as far as those that are not subject to regulation over the burdens that the shippers must pay who are subject to regulation.

I think that spells a good deal for disadvantages the consumer is going to pay when this system is changed if it were changed under this proposal.

Second, there has been no testimony showing any need for this change. There is evidence that both segments, the regulated and the unregulated, are healthy and vigorous and that they have had growth.

Third, it has been pointed out any number of times that there have been no hearings previously with reference to this.

Fourth, the report that was submitted by the House committee talks in terms of witnesses that appeared in favor of the bill but a great majority of those witnesses are witnesses who appeared in favor of the original bill and who not only do not favor the amended version but are vigorously and strongly opposed to it.

I think two procedural points have been mentioned that are very important. One is the fact that the burden is on the proponents when you are talking in terms of a change. And, second, I think that it makes a lot of sense to study first before a drastic change of this nature is proposed which would upset what is presently a healthy situation.

With reference to one other item, the secret rate point, again I think that the key thing is normally when you are trying to protect a con-

sumer you expect the consumer to be concerned about the need for some protection. Here all the people who are using the service are testifying in favor of the present system.

And I think the problem is that the secret rate is obviously a misnomer. What the correct description should be is a bill to destroy competition or a bill to endeavor to take advantage of the regulatory move of commodities in order to place a further burden upon the unregulated carrier who is not in a position to move those regulated commodities.

Very briefly, in that respect, I'd like to state this: That the proponents of legislation presently before the committee—namely, the regulated water carriers—were regulated in 1939. At that time or shortly thereafter they received the rights to move the regulated commodities.

Now, no one else is permitted to move regulated commodities by water. Now, this very small group of regulated carriers have vigorously protected this exclusive domain, and they unite together to vigorously oppose the attempts then of any one else to obtain the right to haul regulated commodities by water.

This concerted opposition has been extremely effective. No significant new common carrier rights have been granted since the initial grants after the adoption of the 1939 act even though river travel has enjoyed a rapid growth.

Basically, the purpose of the legislation before this subcommittee is to try to extend the monopoly that this small group of carriers now enjoy on regulated commodities. This handful desires to be able to employ the high profits that are realized on monopoly movements to drive all other carriers from the river. This small group of regulated carriers cries strongly for equality but really desires equality only after they have first been accorded an insurmountable head start in the competitive race.

In other words, they both want their cake and they want to eat it at the same time in the sense that they want the publication requirements placed on the unregulated but they do not want the unregulated to be any part of their regulated fraternity.

Now, I think the chairman also pointed out very clearly that we are really not talking about secret rates in another sense. We are really talking about the normal American competitive system. When you go in to purchase a car or any other thing on a competitive basis, things don't remain secret very long when you have a competitive structure.

One last point, and that is this: There has been a suggestion that this is a reasonable compromise. This was suggested by Mr. Prince speaking for the railroads, that this is a reasonable compromise.

Now, normally a compromise is something that is worked out between the parties to the compromise. And, unfortunately, the arrangement here could much better be described as a sacrifice in the sense that all of the people who have testified here today who move the commodities that are involved and the unregulated carriers who are being subjected to this regulation were not part of this compromise, and I think that it's extremely important that this is realized and that rather than subscribe to an arrangement that is worked out in this manner that it would be much better to look at the proposal that was suggested by Congressman Ancher Nelsen because what he basically is saying

is that if the railroads do need some assistance as Mr. Hershe seems to be concerned about at this time, if they do need some assistance because there has been a change in the mixing rule, then very logically that assistance ought to come in the area of the mixing rule.

And as long as the unregulated carriers do not move commodities that are regulated and are not affected by the mixing rule, there seems to be a good deal of logic to Ancher Nelsen's proposal which would require the regulated carriers who are in competition with the railroads on the movement of these regulated commodities that bring the mixing rule into effect. It would seem much more logical to suggest as the Nelsen amendment does that any posting or publishing requirements should be with reference to the people who are taking advantage of the new proposal on mixing.

We very definitely have supported in the past the mixing concept. We supported the original bill that was before and passed by this committee. We favor those changes. But we are very strongly and adamantly opposed to the provision relating to the publication of rates.

Thank you for the opportunity to be heard.

Senator HOLLINGS. You are a very excellent windup witness. You have covered the waterfront. We appreciate very much the attendance of the witnesses here today.

(The statement referred to earlier follows:)

STATEMENT OF JOHN MOOTY, SECRETARY, UPPER MISSISSIPPI TOWING CORP.

Mr. Chairman and members of the Subcommittee, my name is John Mooty, Secretary of Upper Mississippi Towing Corporation. Our company is an exempt for hire carrier which ships bulk commodities on the entire inland waterways system.

I appear here today to register vigorous opposition to the pending water carrier mixing rule bill, H.R. 8298. This bill in its original form had the full support of the water carrier industry. H.R. 8298 as amended by the House Committeed on Interstate and Foreign Commerce and as passed by the House helps only a handful of common water carriers at the expense of the vast majority of water carriers and those who use water transportation.

The shipping public and literally hundreds of water carriers have been made the scapegoats in this attempt to push a mixing rule bill.

What began as a simple measure to permit the continuation of mixed tows has now incurred, and rightly so, the virtually unanimous opposition of shippers and the overwhelming majority of the water carriers themselves.

Under an order of the Interstate Commerce Commission which was upheld by the Supreme Court in 1967, it was confirmed that water carriers cannot haul both regulated (nonbulk) and unregulated (dry-bulk) commodities in the same tow. The I.C.C. has stayed this order several times pending consideration of legislation by Congress.

In 1967 this subcommittee held hearings on a bill (S. 1314) introduced by Senators Magnuson and Hartke which would negate the Supreme Court decision and permit the continuation of mixed tows. S. 1314 was approved by this subcommittee, and by full committee, but it was not taken up by the Senate. The House Interstate and Foreign Commerce Committee held hearings on a similar measure, but took no action on it so the measure died with adjournment of the 90th Congress.

In 1969 an identical bill to S. 1314 was introduced in the House by Representative Kuykendall, H.R. 8298.

H.R. 8298 as introduced was designed to do three things:

(1) Permit the transportation by water of commodities regulated under the Interstate Commerce Act and dry bulk commodities which are not regulated to be transported in the same tow of vessels without subjecting the dry bulk commodities to regulation;

(2) Repeal the provisions of the Interstate Commerce Act which limit the number of dry bulk commodities which may be carried exempt from regulation to three; and

(3) Repeal the custom-of-the-trade date of June 1, 1939, which controls which dry bulk commodities may be carried exempt from regulation.

This original bill had the united support of shippers and inland water carriers, even though it was designed basically to benefit only a small number of carriers who haul "mixed" tows.

The Subcommittee on Transportation and Aeronautics on June 19, 1969, amended H.R. 8298 to eliminate the repeal of the three commodity limitation and the repeal of the custom-of-the-trade date. More importantly, the Subcommittee added provisions which require all water carriers transporting dry bulk commodities to file rates on such commodities with the Interstate Commerce Commission. Filing 30 days in advance of a change in the rate is required.

The full Committee on Interstate and Foreign Commerce on September 25, 1969, approved the Subcommittee amendments.

No hearings were held or any public record developed that provides an interpretation or legislative history on the rate filing provisions incorporated in H.R. 8298 by the Subcommittee and approved by the full Committee. During the Subcommittee hearings not one word was spoken concerning publication of rates, nor were there any hearings by the full Committee on the amended bill. The amended bill was secretly worked out and agreed to (by the admission of the author of the bill) by the railroads and a handful of large regulated water carriers to the detriment of both shippers and the water carrier industry as a whole.

The report by the Committee on Interstate and Foreign Commerce on H.R. 8298 states that hearings were held by the Subcommittee on Transportation and Aeronautics and witnesses supporting the proposed legislation appeared. Among these witnesses which the report indicates supported the legislation are The American Waterways Operators, Inc., the National Industrial Traffic League, Manufacturing Chemists Association, National Plant Food Industry, grain shippers and individual bargelines. These did appear in supoprt of H.R. 8298 in its original form. They did not support H.R. 8298 as amended by the Subcommittee and approved by the full Committee on Interstate and Foreign Commerce. Not only did they not support H.R. 8298 as amended, but they are vigorously opposed to the legislation. The basic issue involved in the pending bill is no longer a question of whether there should be mixed tows or not, but a much more fundamental and important issue, namely, whether or not there should be regulation of presently exempt dry commodities. Proponents of H.R. 8298 argue that the bill does not regulate presently exempt carriers. But all one has to do is to read this bill and they will see that it does in fact regulate the exempt carriers. H.R. 8298 requires that there be a filing and publication of rates on dry bulk commodities. H.R. 8298 states unequivocally that such rates cannot be changed except upon 30 day's notice to the I.C.C. H.R. 8298 goes on to provide enforcement and penalty provisions for any violation of these publishing requirements. And it should be noted, Mr. Chairman, that the bill subjects exempt carriers to the burden of I.C.C. regulation but it gives such carriers no rights such as grandfather rights and limited rights of entry which are the normal benefits incidental to such regulation. H.R. 8298 as amended is a one-way street to benefit a handful of common water carriers.

If only affected water carriers, such as my company, were here in opposition to the bill, it would be one thing, but when the consumers and users of our shipping services are just as adamant in joining in opposition to the bill it is another matter.

The fact of the matter is that this bill is to the disadvantage of the users of water transportation. That is why all the great farm organizations of our country oppose H.R. 8298 in its present form. That is why it is opposed by the National Industrial Traffic League, the grain industry, the coal industry, the fertilizer industry, and the chemical industry. The presently unregulated water carriage industry is the most vital and competitive segment of transportation in the United States. This bill is to the detriment of consumers, shippers, and the exempt carriers of dry bulk commodities. Passage of H.R. 8298 will mean less competition in the water industry and resulting in higher rates.

When the proponents of the legislation presently before this Subcommittee, namely the regulated water carriers, were regulated in 1939, they received rights to move regulated commodities. No one else is permitted to move regulated commodities by water. This handful of regulated carriers have vigorously protected this exclusive domain and unite to vigorously oppose the attempt of anyone else to obtain the right to haul regulated commodities by water. This concerted opposition has been extremely effective. No significant new common

carrier rights have been granted since the initial grant after the adoption of the 1939 Act, even though river travel has enjoyed a rapid growth. Basically, the purpose of the legislation before this Subcommittee is to try to extend the monopoly that this handful of carriers now enjoy on regulated commodities. This handful desires to be able to employ the high profits that are realized on monopoly movements to drive all other carriers from the river. This handful of regulated carriers cries strongly for equality, but really desires equality only after they have first been accorded an insurmountable head start in the competitive race.

This handful of carriers have endeavored to describe the legislation before this Subcommittee as similar to truth-in-lending legislation, and contend that the publication requirements are designed to avoid the evils of secret rates. The fallacy of this argument is easily seen when substantially all, if not all, of the shippers whose shipments would be subjected to regulation under the proposed legislation are vigorously opposed to this legislation. These shippers fully understand the problem is not one of secret rates, but the real problem is the destruction of competition. This will inevitably result from the extension of the monopoly of the regulated carriers under the proposed legislation.

This handful of regulated carriers have endeavored to leave the impression that unless the unregulated carrier is required to publish rates that the regulated carrier is at a disadvantage. The regulated carrier can do everything and anything that the unregulated carrier can do. In addition to that, the regulated carrier is permitted to move regulated traffic. The problem incident to mixing arises only when the regulated carrier is endeavoring to exercise the privilege that he exclusively enjoys, namely, the movement of regulated traffic. In the movement of regulated traffic, the regulated carrier is not in competition with the unregulated carrier who cannot move such traffic, but is in competition with other modes of transportation, principally, the railroads who can move such traffic. The Ancher Nelsen amendment proposed in the House and defeated by the narrow margin of 192 to 183 would have limited the posting requirements to regulated carriers. This would have accorded a certain degree of fairness in the regulated carriers' competition with other modes of transportation, but at the same time, would not have given the regulated carrier the license to extend his monopoly which is the purpose and desire of the proponents of the legislation before this Subcommittee.

In summation, Mr. Chairman, we support as in the public interest a bill to permit mixed tows, but we without reservation oppose H.R. 8298 as long as it contains the publication of rates provisions which hurt both us as carriers and those who use our transportation services.

Senator HOLLINGS. The committee will be adjurned.

(Whereupon, at 12:32 p.m., the subcommittee adjourned, subject to the call of the chairman.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 18, 1970.

Hon. VANCE HARTKE,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR SENATOR HARTKE: Thank you for your letter of September 11, 1970, inviting me to testify on behalf of the Commission on H.R. 8298, 91st Cong., 1st Sess., as recently approved by the House of Representatives. I understand that you have sought to keep the hearings as brief as possible, and accordingly, rather than testify in person, I thought I would take this opportunity to convey to you the views of the Interstate Commerce Commission on this legislation.

Domestic water transportation is subject to economic regulation substantially similar to that which applies to railroads and motor carriers. However, when the Congress thirty years ago enacted Part III of the Interstate Commerce Act, it provided for a number of exemptions so that the effectiveness of the regulatory scheme in the interim has been largely negated. While precise data are not available, it has been estimated that as much as ninety percent of the traffic upon the waterways of this country moves under one exemption or another.

Foremost among the exemptions is that afforded by section 303(b) of the Interstate Commerce Act, 49 U.S.C. § 903(b)—the so-called bulk commodities exemption. Essentially it provides that none of the regulatory requirements apply to the transportation of commodities in bulk so long as not more than three such commodities are transported in a vessel, including a tow of barges. The Interstate Commerce Commission always has construed the exemption as obtaining only as long as the vessel, including a tow of barges, contained no non-bulk commodities when being used to transport the bulk commodities. The Commission's so-called no-mixing rule has been sustained by the reviewing courts, most recently in *Gulf Canal Lines, Inc.* v. *United States*, 258 F. Supp. 864 (S.D. Tex. 1966), aff'd mem., 386 U.S. 348 (1967), upholding the Commission's decision in No. W–C–5, *Mississippi Valley Barge Co., Exemption, Section 303(b)*, 311 I.C.C. 103 (1960). The effective date of the Commission's ruling in that proceeding has been postponed from time to time upon the request of the Chairmen of the Senate and House Commerce Committees to permit Congressional consideration of legislative amendments and is now established to be September 28, 1970.

The subject bill, in effect, would abrogate the so-called no-mixing rule and permit the concurrent transportation in a vessel, including tows of barges, of commodities not in bulk and commodities in bulk moving under the exemption of section 303(b) of the Act, subject, however, to the requirement that there be disclosure of the charges for the transportation of the bulk commodities, as provided by the provisions of section 316 of the Act.

While we continue to believe that the best solution is the total repeal of section 303(b) of the Act, the subject bill represents a move in the right direction. At present bulk commodities, such as coal, grain, chemicals and the like, are transported wholly free of regulatory requirements by certain water carriers, under published rates and the other obligations imposed by the Act, and by other water carriers, at least some of the time. Railroads, of course, are subject to complete economic regulation. Such inconsistency in the burdens imposed upon transportation not only places the railroads at a serious competitive disadvantage in their efforts to solicit traffic within the reach of the waterways, but it is completely disruptive of stability in transportation upon the Nation's rivers and lakes. Obviously, traffic is no likely to move by water carriers which now publish rates and are subject to other regulatory requirements so long as other water carriers are free to handle the identical traffic at negotiated rates and free of any other statutory obligations. In the Commission's view, the matter is best resolved by repealing the bulk commodities exemption of section 303(b) of the Act altogether and

subjecting all the affected traffic uniformly to the economic regulations administered by the Commission under the Interstate Commerce Act. The Commission has 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. See, for example, the 76th Annual Report of the Interstate Commerce Commission 208 (1962). Continuance of the present exemption, even as modified by the subject bill, is neither conductive to fair and effective regulation nor to achieving the goals of the National Transportation Policy.

Nevertheless, the subject bill would affect the amendment of the exemption of section 303(b) of the Act in a desirable direction. We favor the requirement that, if the transportation of bulk commodities is to be permitted free of any other regulatory restraints, at the very minimum there be full disclosure of the rates and charges upon which such exempt transportation is performed. This, as we understand it, the subject bill would accomplish by requiring all water carriers, whether otherwise subject to the requirements of the Act, to publish rates and charges for the transportation of exempt bulk commodities in tariffs which meet the requirements of section 306 of the Act. Furthermore, we find merit in fostering the maximum utilization of the equipment plying the waterways and in not impeding the efficiency and economy of water carrier operations by precluding the mixing of bulk and non-bulk commodities in a single vessel, including tows of barges, under the differing regulatory requirements that presently apply. Finally, we agree that it is desirable, that the Commission be afforded the opportunity to study the effects of the amendment and to report to the Congress at the conclusion of the two-year trial period contemplated by the legislation as to its effect and the need, if any, for further revision of the statute. Thus, although the Commission has consistently favored repeal of section 303(b) of the Act, enactment of the proposed legislation, at this juncture, is acceptable to the Commission.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

CALIFORNIA AND HAWAIIAN SUGAR CO.,
San Francisco, Calif., September 15, 1970.

HON. VANCE HARTKE,
Chairman, Surface Transportation Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR HARTKE: California and Hawaiian Sugar Company (C and H) would like to express its support for H.R. 8298, the Water Carrier Mixing Bill, in the form as passed by the House of Representatives.

We believe the bill reasonably reconciles conflicting interests and improves existing legislation. It offers a concession to inland water carriers by permitting the carriers to mix in a single tow exempt bulk commodities and regulated commodities without subjecting the exempt commodities to regulation. But by requiring carriers to file and publish rates and charges under Section 306 of the Interstate Commerce Act, it will discourage discriminatory rate charges and equalize competition of surface transportation with water carriers.

From the point of view of this company, it is most important that the bill does not amend the existing definition of exempt bulk commodities. It has been urged by some that the exemption be broadened so as to include all commodities customarily moved in bulk as of January 1, 1970. Many commodities which were shipped in containers when the present definition was adopted are now carried in bulk. Among these commodities is sugar. California and Hawaiian Sugar Company markets sugar in the mid-West by rail competition with other refiners which are able to utilize waterway transportation. At present both our sugar and that of our competitors must be transported under published rates subject to I.C.C regulation. If the movement of sugar by inland waterways were exempted from I.C.C. regulation by a change in the definition of bulk commodities, this company would have to deliver its sugar through a regulated mode of transportation in competition with others using unregulated barge service. We believe that, if this were to happen, refiners with access to barge service would have the bargaining strength to secure an unfair competitive advantage through discriminatory and secret reductions in barge rates.

We ask that this letter be placed in the record of your Committee hearings on this bill.

Sincerely,

JAMES H. MARSHALL.

STATEMENT OF WILLIAM S. STORY

My name is William S. Story, Executive Vice President, Institute of Scrap Iron & Steel, Inc. (Institute), the national trade association representing approximately 1,300 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.

Iron and steel scrap moves in significant volume on the inland waterways. Accordingly, H.R. 8298, as or ginally proposed and as amended, is very important to the ferrous scrap processing and brokerage industry.

The Institute supports the concept of mixing regulated and unregulated barges in the same tow because to prevent such mixing of 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 operat onally would indeed be contrary to the public interest.

The Institute also supports the rate publication provision in the amended bill so long as it applies to all bulk carriers. It would be a serious challenge to the concept of reasonable rates for ferrous scrap if only those who mix were faced with the publication requirement. The result of such a provision undoubtedly would lead to the diversion of exempt tonnage from the regulated carriers, leaving to the regulated commodities, including ferrous scrap, the entire cost burden of barge common carriage. Certainly, to the extent the exempt traffic contributes to the overall profitability of the regulated carriers, loss of this tonnage to the exempt carriers could only threaten the rate level on the regulated commodities.

There is no need, I am sure, to point out the major problem of solid waste disposal that confronts our nation today. The problems of junk car abandonment, solid waste accumulation, and the need to beautify our landscape are all well known. It is the iron and steel scrap processor who is a key element in the solution, for it is he who has the skill, equipment investment and "know-how" to process and re-cycle much of this accumulation. However, unless he can market the prepared commodity to domestic steel producers as well as into the export market, he cannot perform this service. Reasonable rates for the movement of ferrous scrap is an absolutely critical requirement. Accordingly, the mixing-rule is a significant factor in the effort to control the environment.

The iron and steel scrap processing industry wants to pursue actively 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 is the competitive product) 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 insuring the continued existence of economical and efficient transportation.

NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU,
New Orleans, La., September 18, 1970.

Hon. VANCE HARTKE,
Chairman and Members Senate Subcommittee on Surface Transportation, U.S. Senate, Washington, D.C.

STATEMENT TO BE SUBMITTED IN CONNECTION WITH H.R. 8298—WATER CARRIER MIXING RULE

My name is Louis A. Schwartz. This statement is submitted on behalf of the New Orleans Traffic and Transportation Bureau, a non-profit organization representing the Port and City of New Orelans in all matters pertaining to transportation, the membership of which includes such organizations as the New Orleans Board of Trade, Ltd., the New Orleans Steamship Association, Board of Commissioners of the Port of New Orleans, etc., in opposition to H.R. 8298, *as amended* in the House of Representatives. The original objeective of H.R. 8298 was 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 carry certain dry bulk commodities; however, certain amendments were added by the House, particularly with respect to rate filing provisions which were inserted in the bill, *without hearings*, by the House Sub-Committee on Transportation and Aeronautics. It is these amendments that are objec-

tionable, together with certain amendments treating with reports to be submitted by the barge operators, etc., that should be deleted by the Senate.

The following telegram, addressed to Hon. Warren G. Magnuson, Chairman, Commerce Committee and Hon. Vance Hartke, Chairman Subcommittee on Surface Transportation—under date of August 27th, is quoted below:

"Understand H.R. 8298 barge mixing bill passed by house last week. Bill as passed inimical interests ports, shippers, barge lines, etc., and certainly not in public interest. Respectfully request that hearings be had before the subcommittee on surface transportation or the full Senate committee so as to afford interested parties opportunity appear and point out extent House bill objectionable shipping interests. Joint Magnuson and Hartke."

Information has been received from Mr. Dan O'Neal, counsel for the subcommittee, that due to time limitations, the sub-committee is scheduling only one day for a public hearing in connection with H.R. 8298, so this statement is being submitted for the purpose of expressing such views as may be considered pertinent.

Legislation treating with the up-dating of Section 303(b) of the Interstate Commerce Act was introduced in the 90th Congress (first session) H.R. 7610, including H.R. 8509 by Hon. Hale Boggs, of Louisiana. Hearing in connection with this legislation was held before the Sub-Committee on Transportation and Aeronautics of the House Interstate Foreign Commerce Committee, House of Representatives October 4, 10, 11, 12, 1967. (Serial No. 90–13.) The entire barge industry as well as shippers including ourselves (see pages 65–66 of hearing report), supported this legislation, which was vigorously opposed by the railroads. No further action was taken by the House during the 90th Congress. There was therefore reintroduced in the 91st Congress, H.R. 8298. . . . The original bill had the support of the barge industry as well shippers, however, certain amendments were adopted by the House Subcommittee on Transportation and Aeronautics, without a public hearing and the amended bill was passed by the House, after Congressman Nelsen's amendment was defeated by a vote—yeas 182, nays 193.

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 traffic 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, 1970 (extended by the Interstate Commerce Commission to September 30, 1970).

Our Bureau wishes to go on record in opposition to House Bill 8298, as amended by the House Sub-Committee on Transportation and Aeronautics, without hearing, however, we wish to go on record as supporting H.R. 8298, as originally introduced in the House, or in the alternative, support an amendment similar to the amendment sponsored by Congressman Honorable Ancher Nelsen of Minnesota.

Respectfully submitted,

LOUIS A. SCHWARTZ, *General Manager.*

NATIONAL COAL ASSOCIATION,
Washington, D.C., September 24, 1970.

Hon. VANCE HARTKE,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to register vigorous coal industry opposition to H.R. 8298, the so-called barge mixing rule bill, on which a hearing was held before your subcommittee on Tuesday, September 22.

The bill proposes to require presently unregulated water carriers to file rates with the Interstate Commerce Commission against a long and traditional history

of freedom from such unnecessary controls of the nation's waterways. As originally introduced, H.R. 8298 would *not* have imposed such arbitrary controls, but emerged from the House Interstate and Foreign Commerce Committee with this radical provision. No testimony whatever was given before the House committee with respect to the matter of regulating the unregulated water carriers and a one-day hearing before the Senate subcommittee, we feel, is inadequate consideration for a matter of such far-reaching implications. The bill was held up for many months by the House Rules Committee because of strenuous opposition to its consideration by the House in the light of the failure to hold adequate hearings on the control provision.

These are times when nothing should be superimposed on the nation's economic structure that would further inhibit the growth of the gross national product. Shippers of bulk commodities on the waterways have successfully maintained and expanded their markets because they were free to negotiate reasonable rates without government regulation. H.R. 8298 would definitely impede such transactions, and seriously inhibit the transportation of bulk commodities on the waterways at reasonable rates. The coal industry especially will be adversely affected by this measure as now written, as would the entire shipping industry—grain, chemicals, sand and gravel, fertilizer and all others who ship by bulk on the inland waterway system.

We shall appreciate your making this letter a part of the hearing record.

Sincerely,

STEPHEN F. DUNN.

AMERICAN COMMERCIAL LINES, INC.,
Houston, Tex., September 23, 1970.

Senator ERNEST HOLLINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLINGS: In compliance with your request that I comment on the Department of Transportation's letter of February 20, 1970, which suggests certain modifications in the implementation of H.R. 8298, I am happy to advise that the Water Transport Association has no objections to the substance of any of the Department's proposals.

I would, however, recommend that the study provided for by H.R. 8298 be a joint endeavor of the Department of Transportation and the Interstate Commerce Commission. Moreover, I respectfully remind you that time limitations may severely restrict the practical possibilities of substantial amendment before the termination of the 91st Congress. In the absence of a legislative cure to the "no-mixing" dilemma, the common carriers will have no alternative to separation of commodities with attended increased costs and freight rates.

Yours very truly,

J. W. HERSHEY.

THE AMERICAN WATERWAYS OPERATORS, INC.,
Washington, D.C., September 29, 1970.

Hon. ERNEST F. HOLLLINGS,
Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR HOLLINGS: This letter is submitted in response to your request at the hearing on September 22nd and by letter of September 23rd that I furnish the Subcommittee with the comments of The American Waterways Operators, Inc., on the letter of the Department of Transporation to Chairman William M. Colmer, House Commitee on Rules, dated February 20, 1970.

DOT supported H.R. 8298 as originally introduced—a bill that would have permitted mixing but that would not have imposed rate filing regulation on the many bargelines now exempt from ICC regulation. DOT's letter of February 20, 1970, states that the Department "would prefer the passage of H.R. 8298 as originally proposed. . . ."

DOT's position in support of H.R. 8298 in its original form is entirely consistent with the position of AWO. It is AWO's position, as detailed in my testimony on September 22nd, that existing law should be amended to permit regulated bargelines to mix regulated and exempt commodities, but that there is no justification for the imposition of rate filing regulation on bargelines now transporting bulk commodities under the exemption provided in section 303(b) of the

Interstate Commerce Act. Such an extension of ICC regulation would not benefit consumers or shippers and would seriously injure the many water carriers now transporting bulk commodities.

DOT's letter of February 20th, while noting a preference for the original version of H.R. 8298, suggested a number of amendments and clarifications in connection with H.R. 8298, as amended by the House Interstate and Foreign Commerce Committee. AWO has the following comments with respect to DOT's suggested amendments and clarifications:

A. AWO agrees that DOT would be the proper agency to obtain reports or to conduct any such study as contemplated by sections 2 and 3 of H.R. 8298, as amended. ICC has consistently taken the position before this and other Committees of the Congress that the exemption provided by section 303(b) of the Interstate Commerce Act should be repealed. Under these circumstances, AWO believes that ICC would not be the appropriate agency to report on the consequences of repealing or curtailing section 303(b).

AWO believes that the amendment should expire at the end of one year rather than two years as provided in section 2 of H.R. 8298, as amended, or 30 months as suggested by DOT. The longer the period during which ICC rate filing regulation is imposed, the more difficult it would be to restore present unregulated barge competition and to replace the small bargelines forced out of operation. A 12-month period should be ample time to demonstrate the effect of such rate filing regulation. There is no apparent good reason to continue regulation thereafter while a report is being prepared for the Congress.

B. AWO agrees that the June 1, 1939 "custom of the trade" provision in the present section 303(b) should be eliminated. AWO believes that the custom of the trade limitation should be eliminated entirely rather than replacing the date of June 1, 1939 with January 1, 1970. There is no reason to restrict the bargelines to technological and economic changes occurring prior to January 1, 1970. Elimination of the provision in its entirety would permit shippers to take advantage of and all water carriers to furnish low-cost water transport for the movement of all commodities moving in bulk.

C. AWO agrees that section 5a of the Interstate Commerce Act should be made applicable to the carriers required under H.R. 8298, as amended, to file rates on bulk commodities. It would be impossible for the many small water carriers to comply with the rate filing requirements without the use of rate bureaus and common tariff filing agents such as those now used by regulated water carriers. AWO does not believe that this important matter should be left to depend on statements during floor debate. AWO suggests that all ambiguity and all possibility of future litigation be removed by specific provision for 5a application within the bill.

D. AWO agrees that the term "water carrier operating solely within a harbor" in section 1 of H.R. 8298, as amended, requires clarification. For example, what is the effect of the bill on a carrier operating solely within a harbor when moving a barge brought into the harbor by another carrier? The present ambiguous language will undoubtedly lead to expensive and unnecessary litigation.

E. DOT's suggestion that Congress should declare that carriers required to file rates on bulk commodities with the ICC are not regulated carriers is manifestly unfair and unjust. H.R. 8298, as amended, would impose substantial rate regulation on carriers transporting bulk commodities by requiring the filing and publication of rates on 30 days' notice and by subjecting the carriers to severe civil and criminal penalties for failing to do so. It would be both unfair and unjust to impose this rate regulation and then to deny that the carriers are regulated. AWO disagrees with the DOT's interpretation of the Supreme Court in *American Lines* v. *L. & N. R.R.*, 392 U.S. 571. Carriers operating under section 303(b) are not and should not be excluded from consideration under the National Transportation Policy established by Congress. *National Water Carriers Ass'n* v. *United States*, 120 F. Supp. 719 (S.D. N.Y. 1954).

Let me again express my appreciation for your courtesy in permitting me to testify before your Committee and to submit this letter for consideration by the Committee. If further information on any point related to this subject would be helpful, please let me know.

Sincerely yours,

GRESHAM HOUGLAND.

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