89TH CONGRESS 1st Session } SENATE { REPORT No. 386

FREIGHT CAR SHORTAGES

JUNE 30 (legislative day, JUNE 29), 1965—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1098]

The Committee on Commerce, to whom was referred the bill (S. 1098) to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

INTRODUCTION

The precipitous decline in our national freight car supply, especially in the number of plain boxcars, has reached alarming proportions. Not only is the inadequate supply of freight cars constricting the growth of important industries and causing severe nationwide losses to producers, shippers and consumers, but also it is eroding our transportation capability to move essential military traffic during emergencies.

The steep decline in the ownership of serviceable plain boxcars highlights the need for action to increase our national freight car supply. The number of serviceable plain boxcars on May 1, 1965, was down 3,633 from April 1, 1965, down 30,239 from May 1, 1964, and down 186,716 from January 1, 1958. The number of boxcars junked or retired from service in 1964 was twice the number of new boxcars placed in service.

The committee has been concerned for many years over the continued decline in the number of freight cars. Hearings on the adequacy of our national railroad freight car supply were held in the 78th, 80th, 84th, 86th, and 87th Congresses. Hearings were held by the committee in the 88th Congress on June 17 and 25, 1963, and a bill, S. 1063, was reported on July 16, 1964. Hearings on S. 1098 were held in Washington, D.C., on April 7, 8, and 9; and in Denver, Omaha, and Kansas City, Kans., on April 21, 22, and 23, 1965.

Car shortages, which once were confined to the Midwest during harvest seasons, have become increasingly more frequent, more severe, and nationwide in scope as the national freight car supply has plum-

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meted. It is an unfortunate fact that the situation is getting worse instead of better. Despite the efforts of the railroad industry to cope with this serious problem through a widely heralded car-building program and a new multilevel per diem scale, it is apparent that legislation is necessary to enable the Interstate Commerce Commission to assume a larger responsibility in finding a solution to this problem. The witness for certain eastern railroads owning 30 percent of the Nation's cars emphatically indicated the effect of the present system when he stated: "It takes guts, sir, to spend money on freight cars even if you have got the money."

S. 1098 will furnish the incentive for private enterprise to acquire and maintain a car supply adequate to serve the needs of the Nation's commerce and the national defense.

The text of the bill as approved by the committee is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1(14)(a) of the Interstate Commerce Act is amended by adding at the end thereof a new sentence reading as follows: "In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. In the consideration of any element included in determinations pursuant to this paragraph as an incentive to car acquisition and maintenance the Commission is empowered to make such element, or any part thereof, inapplicable: (1) to carriers determined by the Commission as owning an adequate number of freight cars to meet their responsibilities to the needs of commerce and the national defense; (2) to carriers which terminate a substantially higher percentage of interline traffic than they originate; (3) to types of freight cars the supply of which the Commission finds to be adequate, and (4) to such other cases or circumstances as the Commission finds to be in the public interest."

NEED FOR THE LEGISLATION

In a report filed almost a year ago, the committee discussed the problems created by the car shortage found to exist at that time. Developments since then have been most discouraging, and the car shortages today are very nearly double that of last year.

While carloadings so far this year are up by 2.6 percent, and revenue ton-miles are up 4.5 percent, the total number of serviceable cars of all kinds is down 56,000 from last year. It has been reported that already this year, before the beginning of the harvest season, shippers are demanding 7,500 cars more daily than the railroads can provide. Over the past 20 weeks, boxcar shortages have averaged more than 1,300 daily, and flatcar shortages have exceeded 300 per day in this 4,000 cars short per day. Gondola shortages have averaged well over 1,300 daily, and flatcar shortages have exceeded 300 per day in this same period.

The southwest winter wheat harvest is underway, and for the first time in many years railroads have not been able to stockpile cars in advance of the harvest. Shortages in gondola and flatcars are expected to continue at serious levels. The hopper car supply is falling well below demands. Witnesses for the Department of Agriculture and the Interstate Commerce Commission indicated at the hearings that this year could witness the worst peacetime freight car shortage in our Nation's history.

CAUSE OF INADEQUATE SUPPLY OF FREIGHT CARS

There is nothing mysterious about the cause of the drastic decline in the number of freight cars. The public never hears about railroad cars being junked; instead, railroads announce with pride their car-building programs. The fact is that since January 1, 1945, the Nation's railroads have retired nearly 300,000 more cars than they have built. So long as this condition continues the car supply will dwindle.

As the committee pointed out in its last report, one of the factors which militates against carriers replacing cars as fast as they are retired is the fact that under certain circumstances it is cheaper to rent another railroads' cars than to own them. In order that commerce may flow freely from coast to coast, railroads are compelled to permit their cars to travel to the far corners of the country. When a railroad car is traveling off its home line, a charge per day (per diem) is paid by the renting railroad to the owning railroad. Some railroads still refuse to pay more than $2 per day for the rental of a boxcar that could cost its owner $15,000 to build. As the Interstate Commerce Commission has pointed out: "This policy in practice discourages construction of new freight cars and, in effect, places a premium upon inadequate car ownership and will continue to do so as long as it is cheaper to rent a car than it is to own one."

The Interstate Commerce Act imposes a duty upon the Nation's railroads to provide sufficient freight cars to meet the needs of commerce and the national defense. It is apparent from the progressively worse car shortages that they have failed to fulfill this duty. Fortunately, recent developments indicate that the industry has begun to realize the problem. In our prior report, the committee referred to the system of variable per diem charges related to the value of cars which the majority of railroads voted to make effective on January 1, 1964. This was a step in the right direction, although it did not give full effect to the fact that higher value cars should logically pay higher rental bases. Effective April 1, 1965, three additional value brackets were added to the scale so that the maximum daily rental is $12.18 per day.

This variable basis of per diem charges does not furnish a complete solution to the problem. Standing alone, it does not provide the necessary incentive to induce railroads to increase their car fleets. Some railroads refuse to pay these higher charges, and the charges themselves are still too low to make car ownership an attractive investment. More than 90 percent of all cars under the new variable per diem charges are still rented from the owning railroads for less than $3 per day.

Until rental rates reflect appropriate economic factors, the supply of cars will continue to decline.

OBJECTIVE OF THE BILL

The major objective of S. 1098 is to insure the adequacy of the national railroad freight car supply. This objective is to be attained, not by arbitrary Government action, but by authorizing and directing the Interstate Commerce Commission, after hearing, to prescribe freight car rental charges (per diem), paid by the railroads using cars to the railroads owning cars, upon a basis which will encourage the acquisition and maintenance by the railroads of a car supply adequate to meet the needs of commerce and the national defense; contribute to sound car service practices; and provide just and reasonable compensation to freight car owners.

The bill's objective, an adequate national fleet of freight cars, would be accomplished by providing incentives for increased car ownership through operation of economic laws and the profit motive. In addition, enactment of the bill would contribute to sound car service practices by promoting more expeditous movement of existing equipment. Finally, it would provide just compensation to freight car owners by recognizing the value of the use of such equipment, and would correct inequities which are prejudicial to the interest of car ownership.

In practical effect, S. 1098 states a series of objectives in the public interest, including the "acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense;" recognizes the important influence exerted by daily rental or per diem charges on the adequacy of the national car supply; and directs the Interstate Commerce Commission to fix per diem charges upon any basis which in its judgment, will tend to accomplish these objectives, unfettered by legalistic concepts which have hampered its past efforts.

This bill would recognize and face the unpleasant fact that under present conditions, and for many years in the past, construction of new freight cars may have been discouraged by inadequate car rentals, and a premium may have been placed upon inadequate car ownership. It would direct the Commission, as an arm of the Congress, to use its best efforts to reverse this trend by the establishment of per diem charges which in its judgment will provide an incentive for increased freight car ownership, and insure the adequacy of a national freight car supply.

A committee amendment to S. 1098 adds a new sentence empowering the Commission to apply selectively incentive elements in any increased per diem charge. Under this amendment, the Commission would be authorized to make such incentive element or any part thereof, inapplicable: (1) to carriers determined by the Commission

to own an adequate number of cars to meet their responsibilities; (2) to carriers terminating a substantially higher percentage of interline traffic than they originate; (3) to types of freight cars of which the supply is adequate; and (4) to such other cases or circumstances as the Commission finds to be in the public interest. In its comments on this amendment, the Commission pointed out that all the factors mentioned in the proposed amendment would have been considered by the Commission under the language of the bill as introduced.

BACKGROUND OF FREIGHT CAR SHORTAGE

In our prior report, the committee discussed at length the background of the freight car shortage. It was pointed out that the inadequacy of the Nation's car fleet is universally recognized, unchallenged, and supported by testimony offered before the committee.

Total freight car ownership by class I railroads, excluding refrigerator cars, has decreased substantially since our last report. The high point was reached on January 1, 1926, when freight car ownership was 2,427,026. The following table shows the continued decline:

Date	Cars owned (excluding refrigerators)	Serviceable cars (excluding refrigerators)
Jan. 1, 1945	1,744,179	1,693,194
Jan. 1, 1950	1,730,686	1,596,226
Jan. 1, 1955	1,716,804	1,600,604
Jan. 1, 1960	1,657,792	1,536,429
Jan. 1, 1961	1,636,695	1,480,848
Jan. 1, 1962	1,579,065	1,437,937
Jan. 1, 1963	1,523,080	1,398,577
Jan. 1, 1964	1,482,122	1,379,119
Jan. 1, 1965	1,457,074	1,369,681
May 1, 1965	1,455,275	1,370,537

The committee particularly notes that since January 1, 1945, the freight car fleet has declined by 289,904 cars.

The loss in the number of available freight cars has been most precipitous in the supply of boxcars, the type of car that has been termed the "workhorse" of the car fleet. The following table shows the continued decline in boxcars:

Date	Boxcars owned	Serviceable boxcars
Jan. 1, 1945	742,447	712,637
Jan. 1, 1950	714,914	680,666
Jan. 1, 1955	717,013	679,432
Jan. 1, 1960	705,738	655,665
Jan. 1, 1961	692,565	634,561
Jan. 1, 1962	663,762	610,048
Jan. 1, 1963	637,775	587,960
Jan. 1, 1964	615,887	574,250
Jan. 1, 1965	596,602	559,900
May 1, 1965	592,987	556,759

The committee especially notes that since January 1, 1945, the boxcar fleet has declined by 149,460 cars. The trend in recent times has been toward the construction of more specialized cars of larger capacity, but this is little consolation to the shipper who cannot secure the use of the car he needs.

Especially significant are the recent records of installations and retirements. During the last 5 years, retirement of older cars has consistently exceeded the installation of new cars by a substantial margin. During this period, 384,922 cars were retired while only 201,660 cars were installed, for a net loss of 183,262 cars of all types. In the case of boxcars, 171,101 were retired during this period while only 61,965 were installed, for a net loss of 109,136 boxcars. In the widely heralded car-building program during the year 1964, 65,801 new cars were put into service. However, 86,237 cars were retired, for a net loss of 30,436 cars—a drop of over 2,500 cars every month of the year. Significantly, only 18,016 boxcars were added while 37,301 were being retired.

The foregoing figures amply demonstrate that the national freight car fleet, which is already inadequate to meet the requirements of commerce, is continuing to decrease. To meet the needs of a growing population and an expanding economy, this nation must have more freight cars in operation each year and not less. Twenty years ago the Interstate Commerce Commission in conformity with its statutory obligations ordered an increase in per diem charges for the purpose of promoting greater efficiency in the use of cars, and to the end that the national inventory of freight cars might be increased through the provision of incentives for car ownership. "Increased Per Diem Charges on Freight Cars," 268 I.C.C. 659.

Certain railroads brought suit to challenge the order of the Commission. A three-judge district court held that the Commission's order should be set aside. *Palmer* v. *United States*, 75 F. Supp. 63 (1947). The precise legal effect of that decision is not clear. The court primarily took the view that the record before the Commission was faulty and incomplete, and that the Commission had not made sufficiently adequate findings of fact to sustain its order. The court further held that the Commission could not prescribe per diem charges for "regulatory" purposes, and adopted a narrow and severely restricted interpretation of the word "compensation," inconsistent with the broad grant of power in the statute.

This decision has been construed by some to forbid the establishment of per diem charges upon a basis which would yield more than the barebone cost of ownership. Under this construction, the Commission could not prescribe per diem charges at a level which would produce a profit to the car owner, provide an incentive for car ownership, recognize the value of use of freight cars, stimulate more expeditious use of existing freight equipment, or otherwise encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

The committee does not consider that the *Palmer* case, correctly construed, places the severe limitation upon the exercise of the Commission's power as some have suggested. The committee intends by the enactment of S. 1098 to dispel all doubt on this point. This bill would make it unmistakably clear that the Commission, after hearing and investigation, could and should prescribe freight car rental or per diem charges upon such basis which, in its judgment, will accomplish or further the sound objectives of a car supply adequate to meet the needs of commerce and the national defense.

The committee intends that the Commission should be empowered to provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisi-

tion and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

EFFECT OF THE BILL

S. 1098 would authorize the Commission to prescribe per diem charges which would increase the national ownership of freight cars and thus overcome the adverse effect of the *Palmer* case. This would be accomplished by an amendment to section 1(14) of the Interstate Commerce Act, which was the section so narrowly construed in the *Palmer* case. It is the intent of the committee by this bill that the Commission should also not be hampered in the exercise of its emergency powers contained in section 1(15) of the act.

The committee in the 86th Congress considered S. 1812 which would have allowed the Commission to impose on one or more carriers, when a shortage or threatened shortage of freight cars exists, penalty per diem rates to relieve such shortage and to promote expeditious movement of cars. Such penalty per diem rates, while perhaps useful in emergencies, would not be as helpful in encouraging the construction of cars as would the incentive charges provided for under the present bill. The committee believes that penalty per diem rates are not desirable if other methods are available. By the same token, the committee does not look with favor on legislation to subsidize the construction of new cars for railroads or to build and lease new cars to railroads so long as other methods are available.

While some eastern railroads are still challenging the payment of a rate in excess of $2 per day, most railroads observed a per diem rate of $2.75 from January 1, 1957, to November 30, 1959. From December 1, 1959, to December 31, 1963, the per diem rate most railroads paid to use another railroad's cars was $2.88. As of January 1, 1964, a graduated scale replaced the flat charge varying from $2.16 for older cars to $7.74 for most costly units. Effective April 1, 1965, three additional value brackets of $9, $10.18, and $12.18, were added to the scale. The present charges, with the percent of total cars in each value bracket, are shown below:

Per diem charges, Apr. 1, 1965

Car value	Per diem charge	Percent of total cars, Sept. 1, 1964
0 to $1,000	$2.16	25.0
$1,000 to $5,000	2.79	43.4
$5,000 to $10,000	3.58	23.8
$10,000 to $15,000	4.50	6.0
$15,000 to $20,000	6.15	1.4
$20,000 to $25,000	7.11	
$25,000 to $30,000	9.00	.4
$30,000 to $35,000	10.18	
Over $35,000	12.18	

Opinions differ as to the adequacy of this charge. Railroads are contesting this graduated scale before the Commission, some charging it is too low, and others that it is too high. The committee is convinced that: (1) the current charges provide no profit for the car

owner, over and above the "barebone cost of ownership," if it is even sufficient for that purpose; (2) that the highest per diem rate of $12.18 is wholly inadequate to cover even the "barebone cost" of a new freight car bought or built today; and (3) that the current graduated per diem rates are wholly inadequate to provide sufficient incentive for acquisition or construction of additional new freight cars.

Enactment of S. 1098 is supported by the Interstate Commerce Commission, the Department of Commerce, the Department of Agriculture, the Department of Defense, the National Association of Railroad & Utilities Commissioners, the American Farm Bureau Federation, the American Plywood Association, the National Council of Farmer Cooperatives, a substantial segment of the railroad industry, by shippers and shipping organizations, particularly among the grain, milling, and lumber trades, who continue to suffer severely from recurrent car shortages; and by many States, cities, and ports.

AMENDMENT ADOPTED BY COMMITTEE

At the end of the bill insert a new sentence as follows:

> In the consideration of any element included in determinations pursuant to this paragraph as an incentive to car acquisition and maintenance the Commission is empowered to make such element, or any part thereof, inapplicable: (1) to carriers determined by the Commission as owning an adequate number of freight cars to meet their responsibilities to the needs of commerce and the national defense; (2) to carriers which terminate a substantially higher percentage of interline traffic than they originate; (3) to types of freight cars the supply of which the Commission finds to be adequate, and (4) to such other cases or circumstances as the Commission finds to be in the public interest.

Conforming amendment: On page 1, line 4, strike out "a new sentence," and insert "new sentences."

The Commission's interpretation of this amendment, with which the committee concurs, is as follows:

> All the factors mentioned in the proposed amendment would be considered by the Commission under the language of the bill as introduced.

CONCLUSION

Again this year, the Nation will be faced with a serious car shortage; perhaps even the worst shortage in our Nation's peacetime history. Year after year, conditions have become progressively worse. These shortages annually not only affect our agriculture, livestock, mining and lumber industries, but cause widespread unemployment, impede trade and commerce, and cause fluctuations in supply which impose added cost burdens on consumers. The committee recommends that action be taken promptly to encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense by the enactment of S. 1098.

COST

The enactment of this bill will result in no increased Federal expenditures.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT

SEC. 1(14)(a) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), and the penalties or other sanctions for nonobservance of such rules, regulations or practices. *In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. In the consideration of any element included in determinations pursuant to this paragraph as an incentive to car acquisition and maintenance the Commission is empowered to make such element, or any part thereof, inapplicable: (1) to carriers determined by the Commission as owning an adequate number of freight cars to meet their responsibilities to the needs of commerce and the national defense; (2) to carriers which terminate a substantially higher percentage of interline traffic than they originate; (3) to types of freight cars the supply of which the Commission finds to be adequate, and (4) to such other cases or circumstances as the Commission finds to be in the public interest.*

AGENCY COMMENTS

The comments of the agencies and departments received by the committee follow (all agencies and departments supported the bill except the Department of Justice which withheld comment):

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 8, 1965.

Re B–101874.

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

DEAR MR. CHAIRMAN: We have your letter of February 19, 1965, asking for our comments on S. 1098.

S. 1098 proposes to alleviate the chronic national freight car shortage by amending section 1(14)(a) of the Interstate Commerce Act, 49 U.S.C. 1(14)(a), to authorize the Interstate Commerce Commission to fix more realistic car rentals to be paid by nonowning railroads. The rationale underlying this type of proposal is that the freight car supply may be augmented by the purchase of new cars if per diem rentals are increased so that it is no longer cheaper to rent cars owned by other railroads than to own an adequate supply. In this respect, S. 1098 is identical to S. 179, introduced January 6, 1965. However, unlike S. 179, S. 1098 does not contain a restriction limiting its applicability to the 2-year period immediately following the first Interstate Commerce Commission orders issued thereunder. The 2-year limitation in S. 179 would make the amendment experimental; at the expiration of the time limit, Congress would consider the efficacy of the measure and the desirability of making it permanent. We furnished you our comments on S. 179 in our letter of February 1, 1965, B–101874.

The national freight car shortage, which has existed and increased over the last few years, is a matter of public knowledge. In its 78th annual report, the Interstate Commerce Commission recommends the enactment of legislation similar to that proposed in S. 1098 (legislative recommendation No. 6, pp. 63–64). The Commission has recommended such legislation annually since 1955; hearings on bills having this import were held during the 84th, 85th, 87th, and 88th Congresses. S.1063, 88th Congress, 2d session, was reported favorably by your committee (after addition of a 2-year limitation period), but there was no further action.

Legislation of the type proposed in S. 1098, if enacted, whould not directly affect the functions and operations of our Office, but we think it is in the public interest. We therefore recommend that it receive favorable consideration by your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 6, 1965.

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

DEAR SENATOR MAGNUSON: This will reply to your letter of February 19, 1965, inviting comments on S. 1098, a bill to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

The bill would add a new sentence to the above section, as follows: "In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

The Department recommends passage of this bill. It may be well, in view of the committee amendment to S. 1063, 88th Congress, to add a section 2 reading: "The amendment made by this act shall be effective only during the 2-year period following the effective date of the first orders issued by the Interstate Commerce Commission under the authority of such amendment with respect to compensation to be paid for the use of freight cars." Addition of such a section would allow a fair time for appraisal of the effect of Interstate Commerce Commission orders which may result from enactment of the bill, and provide experience by which to judge the bill's effects on the car supply situation.

The supply of serviceable freight cars continues to decline by substantial numbers annually. The inadequate car supply has placed a burden not only on domestic commerce but on our exports of agricultural products by adding to port costs. Many railroads have taken the position that they do not care to speculate on there being sufficient future traffic to justify purchases of high-priced cars, particularly the general purpose box car. This attitude has been maintained even though the Interstate Commerce Commission forecasts greater future traffic requiring more cars.

The bill, if made law, probably would have the effect of increasing the present utility of cars by increasing the turn-around rate. This, of course, would be beneficial. Higher per diem for cars does brighten the financial opportunity for acquisition of additional cars, but this alone may not be enought to stimulate the needed increase in car acquisition. The adoption by the railroads in 1964 of a multilevel rate of compensation for each other's freight cars has not yet aided in

bettering either the car supply or the railroad ability to meet adequately the needs of commerce.

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

Sincerely yours,

ORVILLE L. FREEMAN.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 6, 1965.

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

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department on S. 1098 and S. 1786, identical bills, and a similar bill, S. 179, to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

These bills would add a new sentence to section 1(14)(a) requiring the Interstate Commerce Commission, in fixing the compensation to be paid for the use of freight cars, to give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply. On the basis of such consideration, the Commission would be required to determine whether compensation should be computed on the basis of elements of ownership expense, the value of use, or upon a combination of bases as in its judgment would provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. S. 179 provides that the amendment to the act made by the bill shall be effective only during a 2-year period.

This legislation has been recommended by the Commission annually since 1955. This proposal stemmed from the decision of the U.S. District Court for the District of Columbia in the *Palmer* case, a suit against an order of the Commission increasing per diem from $1.15 to $2 for 6 months, October 1, 1947, to March 31, 1948, to " * * * promote greater efficiency in the use and increase the supply of cars * * *." The court in holding the order invalid said "the specific power to fix compensation for the use of cars is not coextensive with the general power to regulate the use of cars." *Palmer* v. *United States*, 75 F. Supp. 63, 67 (D.C.D.C. 1947).

The current bills have been introduced to overcome the effect of the *Palmer* case by legislation which would give the Commission authority to fix the compensation paid for use of freight cars in relation to the national freight car supply, since the court ruled it could not do this under the existing provisions of section 1(14)(a).

The purpose of these bills is purportedly to alleviate the freight car shortage, especially the seasonal shortage for boxcars. There are sometimes proclaimed shortages of other type cars, such as refrigerator cars. The Interstate Commerce Commission has made investigations from time to time and increased the per diem rate on box cars from 20 cents to $2.75 over a period of years, but the problem has not been solved by that method. The first extensive car shortage investigation

by the Commission was in 1907, "Car shortage—Insufficient Transportation Facilities," 12 I.C.C. 561 (1907). The next was in 1917, "Car Supply Investigation" 42 I.C.C. 657 (1917).

In 1930 the Commission, in "Rules for Car-Hire Settlement," 160 I.C.C. 369, 378 (1930), noted that, under the "per diem agreement" then in force among the common carriers by railroad, "The per diem rate is supposed to reflect the average cost, to the owner, of freight-car ownership and maintenance, and embraces cost of repairs, cost of taxes, cost of replacements, miscellaneous expenses, and 6-percent interest on the investment." Testimony at the hearings on "Freight Car Supply" in earlier Congresses, indicated that the per diem rate included, in addition, participation by the nonowner user in the idle time of the car and replacement cost based equally on cost of reproduction and on depreciation ledger value. Many specialists have counseled that the base figures used may be subject to question because the railroads follow Interstate Commerce Commission's bookkeeping classifications which do not require the segregation of car ownership costs from car use costs and other costs. It would appear appropriate to initiate changes in accounting procedures so that the cost of ownership can be segregated from the other costs which are lumped together.

The railroads are not uniform in their approach to the problem of freight car supply, the present system of car ownership, per diem car rentals, or the car service rules governing the distribution of freight cars. This divergence occurs generally between originating and terminating roads. Since originating roads must own enough cars to protect their traffic, they desire the prompt return of owned cars (especially during seasonal shortages) even if they must be moved empty. But terminating roads frequently find it advantageous to retain foreign cars and to minimize their own ownership, particularly when the revenue per loaded car-day exceeds the per diem rental and traffic is active.

Even though the per diem charge may cover the overall cost of ownership and car repair, the method used in assessing the charge—a flat per diem rate regardless of type of car, season of the year, or length of usage—does not provide a rental revenue system which takes varying cost and value situations into account. Alternative bases of charges should be considered, and put into effect, which apportion the cost of car ownership more equitably among the various classes of users, particularly those requiring premium service or service exclusively during peak demand periods.

Insofar as the railroad industry cannot agree on any suitable system of charges which takes into account an equitable apportionment of the cost of car ownership and repair, it is logical that the regulatory agency should have the authority to assist the industry to develop a more suitable system in the public interest. To this end, the present legal restrictions need to be modified through amendment to the Interstate Commerce Act.

An equitable apportionment of the cost of ownership among car users does not in any way imply support of penalty charges designed solely to punish railroads and other car users by collecting rentals or other charges over and above the cost of ownership and repair. The objectives of a penalty per diem system can better be met through the Commission's ample authority to move cars under car service orders.

A system for the equitable apportionment of car costs is similar to the well-accepted principles of utility pricing which assesses premium and peak users differentially higher rates than other users on the ground of the greater cost of providing service. S. 179, S. 1098, and S. 1786 make possible such differential charges for railroad car use.

Because of the need to provide a more equitable apportionment of railroad car costs, and because the railroad industry requires the assistance of the regulatory authorities in developing such a system of charges, the Department favors the enactment of the provisions of these bills as a means of accomplishing these objectives.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

DEAN LEWIS
(For Robert E. Giles).

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 9, 1965.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 179 and S. 1098, 89th Congress, bills to amend section 1 (14) (a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

The purpose of the bills is to insure the adequacy of the national railroad freight car supply through adjustment by the Interstate Commerce Commission of the compensation to be paid for the use of freight cars. The bills prescribe the criteria to be employed by the Commission in considering methods by which compensation may be adjusted so that it will be just and reasonable, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

The Department of Defense is vitally interested in an adequate railroad freight car supply in the United States. It appears that enactment of the proposal may contribute in some measure toward improving the freight car supply situation in the United States in the future. Although it is believed that, under the Interstate Commerce Act as presently written, the Commission could utilize the criteria set forth in these bills, it would be advantageous if the Interstate Commerce Act were amended to be more specific and mandatory on this point. Accordingly, the Department of Defense recommends enactment of this legislation.

The fiscal effects of this proposal cannot be estimated.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

Identical report sent to House Interstate and Foreign Commerce Committee on H.R. 425, 89th Congress, this date.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 22, 1965.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1098, a bill to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice, we offer no comment on it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 7, 1965.

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

DEAR MR. CHAIRMAN: Your letter of February 19, 1965, requested the views of the General Services Administration on S. 1098, 89th Congress, a bill to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

The purpose of the bill is to amend the Interstate Commerce Act to grant the Interstate Commerce Commission authority to prescribe charges for the use of railroad freight cars on a basis that will provide an economic incentive to the railroads to acquire and maintain a supply of freight cars adequate to meet the needs of commerce and the national defense. The bill is identical with S. 179, 89th Congress, on which we have earlier submitted a report favoring enactment, except that the instant bill (S. 1098) does not carry any limitation on effectiveness of the amendment, as did S. 179.

Under title II of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), GSA is responsible for prescribing for the use of executive agencies, policies and methods of procurement and supply of transportation and traffic management. In addition, with respect to transportation and other public utility services for the use of executive agencies, GSA is responsible under this authority for the representation of such agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies.

Inasmuch as we believe that appropriate measures to increase freight car supply are in the interest of shippers, including the executive agencies of the Government, GSA favors the enactment of this measure.

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

Sincerely yours,

LAWSON B. KNOTT,
Acting Administrator.

APRIL 6, 1965.

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

DEAR CHAIRMAN MAGNUSON: Your letter of February 19, 1965, addressed to the Chairman of the Commission and requesting comments on a bill, S. 1098, introduced by you (for yourself and 31 other Senators), to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes, has been referred to our Committee on Legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

S. 1098 (which is identical to Legislative Recommendation No. 6 in the Commission's 78th annual report), would grant the Interstate Commerce Commission authority to prescribe per diem charges for the use of railroad freight cars on a basis that will provide an economic incentive to the railroads to acquire and maintain a supply of freight cars adequate to meet the needs of commerce and the national defense.

The diminishing supply of railroad freight cars has been a matter of considerable concern to the Commission for many years. Despite the generally expanding economy of the country, the ownership of freight cars is now less than it was during World War II. As a result, critical shortages of increased duration and severity have become almost commonplace on the national transportation scene. Studies made in 1950 indicated that a total of 1,935,500 freight cars would be required by 1956 to meet the anticipated needs of shippers. As of January 1, 1956, however, freight car ownership and control of class I railroads (including railroad-owned or controlled refrigerator cars) totaled only 1,774,614 cars. As of January 1, 1965, this figure had fallen to 1,550,477 cars, a record low.

In addition to inadequate car ownership, one of the greatest contributing factors to recurring freight car shortages has been the failure of some carriers to utilize the existing fleet of equipment more efficiently. During periods of critical shortages the Commission has resorted to every means at its command to cope with the problem. We have issued numerous car service orders to assure equitable distribution and maximum utilization of the freight cars remaining in service. In addition, greatly stepped up demurrage charges have helped to insure prompt loading and unloading by shippers and receivers. While such actions have heretofore provided a measure of relief, they are becoming less effective and increasingly controversial as the total supply of freight cars continues to decline each year.

Since the earning value of freight cars often substantially exceeds the current scale of per diem charges, some of the carriers have found it cheaper to pay the per diem or car rental charge than to own cars. These carriers, therefore, lack sufficient economic incentive to provide

their fair share of an adequate car supply. The assistance that can be expected from the institution of the multilevel per diem system established by the carriers is questionable. This system is based generally on the concept of adequate compensation to owners of cars purchased, on the basis of cost, condition, or age, but compliance with the plan is voluntary and some carriers have not accepted it.

Some time ago the Commission attempted to take the profit out of "renting" equipment by imposing a penalty per diem charge which it believed would furnish a pecuniary spur to deficit railroads to acquire a sufficient number of cars to at least take care of their own loading obligations. (*Increased Per Diem Charges on Freight Cars, 268 I.C.C. 659 (1957)*). However, in *Palmer* v. *United States*, 73 F. Supp. 63 (1947), the Commission's order was set aside by a three-district court which held that the Commission could not prescribe per diem charges for "regulatory" purposes. The effect of this decision has been construed as precluding the Commission from prescribing per diem charges which would produce a profit to the carrier owner, provide an incentive for car ownership, recognize the value of the use of freight cars, and require the acquisition and maintenance of a car supply adequate to meet the needs of commerce and of the national defense. While the *Palmer* case may not place the stringent limitations upon the Commission which some suggest, we believe that there is sufficient doubt in this respect that it should be made clear in the statute that the Commission has authority to establish per diem charges above the bare costs of ownership and at a level that would make the advantages of owning equipment more attractive.

If the advantages of owning equipment could be made more attractive, there should be a greater willingness on the part of every railroad to make its just and equitable contribution to the national freight car fleet. S. 1098 proposes to accomplish this objective by amending section 1(14)(a) of the act so as to authorize the Commission in establishing a per diem charge for the use of freight cars to determine whether such charge should be computed upon the basis of the elements of ownership expense involved, including a fair return on value, or on elements reflecting the value of their use, or upon such other basis or combinations of bases as, in the Commission's judgment, will provide reasonable compensation to the owner, contribute to sound car service practices, and encourage the acquisition of an adequate national supply of freight cars. In essence, the proposal would authorize the Commission to fix per diem charges which would motivate every railroad to maintain its ownership of freight cars at a level which will meet the needs of the shipping public during normal times and provide a reasonable supply during periods of emergency. Its enactment would thus overcome the effect of the decision in the *Palmer* case and would be of substantial assistance to the Commission in its efforts to alleviate the crippling economic effects of freight car shortages.

For the above reasons we strongly support enactment of S. 1098.

Respectfully submitted.

JOHN W. BUSH,
Acting Chairman, Committee on Legislation.
LAURENCE K. WALRATH.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PLANNING,
Washington, D.C., April 12, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 179, 89th Congress, a bill to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes.

Past periods of car shortages and surpluses have shown that the national freight car inventory reflects changes in the level of tariff, rather than changes in the amount charged for freight car hire. However, we are in favor of measures which would encourage railroads to construct rather than rent boxcars and believe that this bill might assist in attaining that objective.

While it is not certain that this bill will contribute substantially to strengthening the mobilization base, we favor the proposed authorization of the Interstate Commerce Commission to consider freight car supply as a factor in its determination of rental rates.

From the standpoint of the administration's program, the Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely,

FRANKLIN B. DRYDEN
(For Buford Ellington, Director.)

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