

dental to the primary one and necessary to its effective performance." Pursuant to the Court's decision a cooperative would be permitted to engage in the transportation of so-called "non-farm related" property to the extent that such transportation activity is incidental to its primary activity of transporting its own or member property and necessary to the effective performance of that activity.

We should like to emphasize that our position in cases involving the cooperative exemption has not been dictated solely by the belief that this is the proper legal interpretation of the statutes, but also by the conviction that the public interest would be appropriately served. Clearly, the interests of the cooperatives and their farmer members are served through the greater operating efficiencies made possible under the "incidental and necessary" test of the *Northwest* decision. Further, to the extent that the motor carrier operations of the cooperatives are efficient, the interests of the marketing system and of consumers are served. At the same time, Department statistics clearly indicate that the impact upon the regulated common carrier industry of transportation by the cooperatives of property which might otherwise be transported by the common carriers is quite negligible. Accordingly, we believe it would not be in the public interest to adopt the restrictive approach provided for in H.R. 6530.

Although the Department is opposed to H.R. 6530, there would appear to be merit in legislation which would clarify the scope of the exemption and assist the ICC in its enforcement of the motor carrier provisions of the Act. Our views may be summarized as follows:

First, we believe it would be appropriate for a cooperative to be required to notify the Interstate Commerce Commission if it intends to transport for hire in motor vehicles which it controls or operates, any property other than its own or that of its members, farm products and farm supplies for non-member farmers, and commodities exempt under section 203(b)(6) of the Interstate Commerce Act. The ICC would thus have a record of those cooperatives which intend to transport the type of property which has been the subject of controversy.

Second, to further assist the ICC and to meet one of the problems with respect to which Commission representatives have expressed concern, we believe the Commission or its agents should be given express authority to have access to the books, records, and accounts pertaining to the motor vehicle transportation of those cooperatives which transport property in accordance with their notice to the Commission.

Third, we believe the quantity of this non-cooperative traffic described above which a cooperative could transport in any year should be limited to a quantity which is incidental to the primary transportation operation of the cooperative and necessary to its effective performance. Such a limitation, we believe, flows from application of the decision in the *Northwest* case referred to previously. The amount of such property which cooperatives should be authorized to transport in order to achieve efficiency of operation will vary depending upon the nature of the business of the cooperative, the geographic area where it operates, and the availability of other backhaul traffic.

Fourth, to clarify a question which has arisen in the past and which appears to be one of concern to the regulated motor carrier industry, we believe that *transportation* operations which a cooperative carries out for non-members should not exceed the *transportation* operations which it carries out for members. Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. Apparently, there is concern that in a case where the only non-member business of a cooperative is transportation, the cooperative would be free to engage in transportation for non-members in an amount equal in value to the total business of all kinds conducted by the cooperative for members. A provision which would equate non-member *transportation* business with member *transportation* business would alleviate this concern.

There has also been concern expressed that under the language of the Agricultural Marketing Act cooperatives could transport property for the U.S. Government or any of its agencies without limit. We question, however, whether any such result was intended. Any doubt could be removed by a specific provision that transportation of property for the U.S. Government or any of its agencies is to be considered non-member business.

We believe that legislation which embodies the views set out above would constitute an appropriate prescription of the intended scope of the cooperative exemption, and would provide a mechanism which would materially assist ICC