

in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

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

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

OFFICE OF THE SECRETARY,
DEPARTMENT OF TRANSPORTATION,
Washington, D.C., August 2, 1967.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 6530, a bill

"To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members."

Section 203(b)(5) of the Interstate Commerce Act provides that, except for safety considerations and qualifications and maximum hours of service of employees, there shall be no Interstate Commerce Act regulation of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act of 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined. "Cooperative association" as defined in the Marketing Act means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distribution, and/or furnishing farm supplies and/or farm business services, provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First: That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second: That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third: That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

The present proposal would amend section 203(b)(5) by adding language which would indicate that, in transportation for nonmembers for compensation, the exemption from regulation would apply only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

Basically, H.R. 6530 is designed to eliminate certain kinds of traffic from the benefits of the exemption. More specifically, the bill is designed to overcome the decision of the Ninth Circuit Court of Appeals in *Northwest Agricultural Cooperative Association v. ICC*, 350 F. 2d 252, which held that an agricultural cooperative (as defined in the Marketing Act) whose primary activity was transporting farm products and farm supplies did not lose its status as a cooperative association so as to subject its transportation activities to economic regulation by the ICC where its transportation of non-farm products and supplies was incidental and necessary to the cooperative's farm-related transportation, both in character and amount.

The court defined *incidental* as "limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to the . . . [the cooperative's] income from trucking farm products and farm supplies."