

*Necessary* was defined as when "it is not economically feasible to operate the trucks empty on return trips, and . . . [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

The court further stated that "a cooperative would not be of this character [an association as defined] if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult to imagine circumstances under which non-farm related business could approach fifty percent of the total and still remain incidental and necessary to farm-related business."

In reaching its conclusions, the court relied on the legislative history, the precedents in *ICC v. Jamestown Farmers Union*, 47 F. Supp. 749 (D. Minn. 1944), aff'd. 151 F. 2d 403, 8th Cir. 1945, and repeated rejections by Congress of past efforts to narrow the reach of the Agricultural Marketing Act to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the Agricultural Marketing Act is based. The court also rejected the ICC's effort to impose a definition which would have required that transportation of traffic other than for cooperative members must be "functionally related" to the business of the cooperative. The Supreme Court denied a petition for certiorari at 382 U.S. 1011.

The Department is opposed to the proposed legislation. The present exemption has permitted the agricultural cooperatives to conduct efficient and economic operations by allowing a limited amount of for-hire truck transportation. As the Circuit Court pointed out, the legislative history and prior court decisions supported the position of the cooperatives. Moreover, in the 1966 hearings on S. 1729, a similar bill, it was demonstrated that the cooperatives themselves had exercised initiative in 1959 in attempting to resolve the matter by getting the Interstate Commerce Commission to adopt formally its own Administrative Ruling as to their activities; the ICC had rejected their overtures. It was further demonstrated that the amount of non-agricultural supplies hauled for nonmembers was less than 0.9 of 1 percent of all of the backhaul trips (which included member traffic and agricultural products exempt elsewhere under section 203(b)(6)). Based upon Department of Agriculture studies, it was estimated that the volume of trucking at issue was .00027 of 1 percent of total trucking operations in the Nation. In addition, the cooperatives were able to demonstrate that the seven motor carriers who appeared at the hearings on S. 1729 asserting injury had substantial overall growth rates and an increase in earnings. Moreover, when investigatory proceedings have been undertaken by the ICC, the cooperative involved has made its books available to the Commission.

In sum, the Department is of the opinion that the present exemption is consistent with Congressional intent and that it has not been abused in any sense to the significant detriment of regulated carriers. Our position in this regard reflects both civilian and military considerations. Transportation by agricultural cooperatives for the Department of Defense, while it has permitted efficient service and needed economics in the face of rising freight rates, has been extremely modest when compared to the total amount of traffic moved for that Department by all land carriers.

Section 203(b)(5) is a carefully drawn statute which properly recognizes that the needs of agriculture and those of the regulated for-hire industry must be carefully balanced if the public interest is to prevail. The Commission itself has been able to carry out this intent since the Northwest decision by developing a body of case law within the framework of the court's decision in such recent cases as *Edgerton Cooperative Oil Association—Investigation of Operations*, 105 M.C.C. 100, *Cache Valley Dairy Association Investigation of Operation*, 103 M.C.C. 798, and *Agricultural Transportation Association of Texas Investigation*, 102 M.C.C. 527. It is therefore apparent that the Commission is in a position to cope with any issues presented by the activities of cooperatives, and is not, in our opinion in need of further authority restrictive of a small but legitimate activity. It could also, for example, propose by rulemaking appropriate guidelines to clarify any uncertainties as might appear.

One possible amendment, as we view matters, is that necessitated by the failure of the Agriculture Marketing Act to classify the transportation of property for the U.S. Government or any of its agencies as non-member business. We would have no objection to such a clarifying amendment. As to H.R. 6530, however, we would oppose its enactment.