

these exempt carriers were beginning to transport, on a substantial basis, commodities which bore no real relationship to the primary farm or farm related activities of these associations.

This situation was aggravated by the existence of certain agricultural cooperative associations that are only superficially qualified under the definition of such cooperatives set forth in the Agricultural Marketing Act of 1929, which is incorporated by reference in section 203(b)(5) of the Interstate Commerce Act, and by the decision in *Northwest Agricultural Cooperative Association v. Interstate Commerce Commission* (350 F. 2d 252 (9th Circuit 1965) cert. denied 382 U.S. 1011 (1966)) which relaxed to a considerable extent the limitations on the transportation activities of bona fide cooperative associations in a carrying non-farm-related products for nonmembers. It was against this background that we recommended enactment of S. 752 and H.R. 6530.

In the course of the Senate committee's deliberations on S. 752 in its original form, several alternatives to our initial proposal were offered by representatives of motor carrier and railroad industries and a representative of the National Council of Farmer Cooperatives.

As amended by the Senate committee and passed by the Senate, S. 752 represents a composite of the many views expressed in the course of the Senate hearings. Although the Department of Agriculture, along with the Departments of Defense and Transportation initially opposed any legislation in this area, the Secretary of Agriculture subsequently indicated a willingness to accept an amended version of S. 752 provided certain additional changes were made. These changes are included in the Senate-passed bill.

The additions made to section 203(b)(5) by S. 752 are set forth and discussed on pages 10 to 16 of the Senate committee's report (Agricultural Cooperative Transportation Exemption, Report No. 1152, 90th Cong., 2d sess.).

In essence, these amendments limit the interstate transportation for compensation by a cooperative for nonmembers who are neither farmers nor other cooperatives to that which is "incidental to its primary transportation operations and necessary to its effective performance" unless such transportation is otherwise exempt under part II of the act and places an upper ceiling on nonmember transportation by providing that in no event shall it exceed 15 percent of its total interstate transportation services, measured in terms of tonnage in any fiscal year.

S. 752 also requires a cooperative to give notice to the Commission of its intent to engage in transportation for nonmembers who are neither farmers nor another cooperative.

It also limits the total interstate transportation for compensation for all nonmembers (including that performed for farmers and others not subject to the 15-percent limitation) to a quantity of property which is equal in tonnage to that which it performs for itself and its members in any fiscal year. Finally, S. 752 amends section 220 of the act so as to clarify our authority to inspect the books and records of a cooperative association.

As originally introduced, both S. 752 and H.R. 6530 would have limited transportation by exempt agricultural cooperative associations for nonmembers to "farm products, farm supplies, or other farm-related traffic."