

Mr. DICE. That is correct; within the limitations if this bill should be enacted. This would have to remain incidental to the primary transportation objectives of the cooperative and necessary to its effective performance.

You see, in transporting its own goods, if the cooperative returns empty in all instances obviously its transportation operation will not be efficient. The right to haul incidental and necessary traffic, the right to haul this otherwise regulated traffic to an incidental and necessary degree we have felt was the intent of the Congress in its original enactment.

Without regard to the question of congressional intent, now that we are talking about possible new legislation, we believe that it is desirable that this be permitted to the incidental and necessary degree and we have agreed, we have not raised objections to the 15 percent limitation.

Mr. PICKLE. Certainly as you have said if the cooperative shipped to and from a different point commodities which were directly related to their own operation then they could ship 100 percent of the goods and no limitation would be necessary.

Now, I think there would be some question of what would be the congressional intent, if they went outside of that, how much would they be allowed. I assume in your case, the U.S. Department of Agriculture, you would like to have for them a very large percent for the limitation and I assume that the Interstate Commerce Commission and the carriers would want it to be more limited in what that amount would be.

Mr. DICE. In its decision in the so-called Northwest Agricultural Cooperative case, the Ninth Circuit Court of Appeals made reference to the necessity that a cooperative maintain its status as an agricultural cooperative. While I can't quote it exactly from memory they said in effect that it is difficult to believe that this nonfarm-related traffic could approach 50 percent and still remain incidental and necessary to the cooperatives' primary purpose.

Mr. PICKLE. That is all, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions, Mr. Chairman.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Dice, I am in the same position as our chairman. We have had a number of bills before this subcommittee that have been unusual this year involving a lot of controversy. So, I haven't had an opportunity to read the Senate reports. So, if we could get a little background on this, I understand that the cooperatives were, of course, granted this exemption for a worthwhile purpose but then in order to make it more productive or lucrative they started the backhauls of virtually everything—steel, wire, refrigerators; everything else. So, then the Commission had to come in and try to take some corrective steps to control this.

Is that not the way the problem arose?

Mr. DICE. This is right.

Now, you referred to returning with almost anything. There is quite a considerable variety of this so-called nonfarm-related traffic or traffic that would be subject to regulations. But this doesn't mean that the cooperatives which transport this on backhaul do so in large