

volume. Of course, if this bill is enacted, it would place a very definite limitation. But under the interpretation of provision 203(b)(5) by the Ninth Circuit Court of Appeals, the transportation of this nonfarm-related goods would have to remain incidental to the primary purpose of the cooperative and necessary to its efficient performance or efficient operation.

In several instances that has become well known, the *Northwest Agricultural Cooperative* case and the *Cache Valley* case which was the subject of litigation also, the amount of this backhaul traffic of nonfarm-related goods generally was in the range of 15 to 18 percent of the total interstate transportation.

Mr. WATSON. So even if we pass this bill here the cooperatives will be able to continue to perform virtually as they have been?

Do I construe that from your statement?

Mr. DICE. The Senate committee makes it clear, at least it makes clear its intent that the incidental and necessary language still prevails.

Now, the amount of transportation that a cooperative could undertake which would be incidental and necessary to its primary operation would depend in some measure on the area of the country in which it operates, the availability of other backhaul traffic, and the general nature of its operations. It could very well be that if a federation of cooperatives, for example, has members in several sections of the country, that the outbound movement from one of its members will make possible a backhaul movement from another. In such an instance, it might be that it could be determined that the amount of traffic which would be necessary to the effective operation of that cooperative might be less than 15 percent.

Now, if the 15-percent limitation were not there, there might very well be an instance where a cooperative with virtually no opportunity for backhaul traffic might haul something more than 15 percent of the nonfarm related goods and this might be quite appropriate in terms of making its operations efficient.

Mr. WATSON. Of course, in some instances, that is the very problem; they have been hauling substantially more than that, primarily on the backhaul.

Mr. DICE. I don't personally have any knowledge of instances of bona fide cooperatives that are hauling substantially more than that. Now, there may be such instances. If they are, I am not aware of them.

Mr. WATSON. Under the terms of the Senate bill, the cooperatives would be restricted to no more than 50 percent for nonmember traffic first.

Mr. DICE. If they engage in the transportation of any of this otherwise regulated traffic.

Mr. WATSON. That is right. But they would be limited to 50 percent nonmembers. What is the limitation presently if they do not choose or even if this bill passes, if they do not choose to come under the provisions of it, what is the limitation for cooperatives so far as nonmember traffic?

Mr. DICE. Under the Agricultural Marketing Act of 1929 and this proposed legislation would not change that, under the Agricultural Act, the cooperative could not remain a cooperative and do a total amount of nonmember business in excess of its member business. This is one of the criteria.