

Mr. WATSON. In other words, they are limited to 50 percent non-member business.

Mr. DICE. And this relates to all kinds of business.

Mr. WATSON. So we still retain the 50-percent limitation so far as nonmember business?

Mr. DICE. That is right.

Mr. WATSON. Second, if they choose to take advantage of this and they are limited to 15 percent of their total volume so far as incidental shipments.

Mr. DICE. Total interstate transportation; yes, sir. 50 percent of the total, both member and nonmember. That is right.

Mr. WATSON. I looked at the Senate bill, S. 752. On the first page, line 10, it says, "shall be limited to that which is incidental to its primary transportation operation."

Aren't we inviting just a constant lawsuit here as to construing incidental? What is incidental to its primary transportation operation?

Mr. DICE. Generally, that would be backhaul transportation after movement of a load for the cooperative or its members.

Mr. WATSON. What would the backhaul consist of? That is the problem. I know they have to have a backhaul business in order to make it somewhat economical.

Mr. DICE. The backhaul could consist of farm supplies. It could consist of reciprocal traffic, from another cooperative. It could consist of unmanufactured products of agriculture that are exempt under 203(b) (6) of the act. To the extent that it stays, assuming enactment of this legislation, within 15 percent of the total, then it could also transport the other commodities.

Mr. FRIEDEL. Will the gentleman yield for a brief question?

Mr. WATSON. Yes.

Mr. FRIEDEL. Would it include lumber if the farmer said he wanted to build a new barn, or roofing for a roof?

Mr. DICE. If it is for farm supply purposes, we think this would be included.

Mr. FRIEDEL. Would it include lumber, roofing, things of that sort, or would it be just agricultural products?

Mr. DICE. I would say this would come within the scope of farm supplies. I am not saying that lumber for any purpose. I am saying lumber for the purpose of construction and use on the farms of members.

Mr. WATSON. I was just going to pursue this a little bit and find out some specific things in your judgment which may be included or excluded.

Mr. PICKLE. I hope the gentleman will ask who makes this determination.

Mr. WATSON. I was going to ask that. I will ask it now.

Who will make the determination as to what is incidental and what is necessary?

Mr. DICE. The Interstate Commerce Commission.

Mr. WATSON. If their decision is not in line with the general common carriers, then we have an invitation for a lawsuit, do we not?

Mr. DICE. I suppose that whenever there is disagreement with the decision of the Commission there is potential for a lawsuit.