

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation by the Interstate Commerce Commission. On August 10, 1965, the United States Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F. 2d 252, cert. den. 382 U.S. 1011 (1966) judicially established the right of agricultural cooperative association truck lines to back-haul non-farm commodities for non-members. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use is deemed to be in the best interest of the Government.

S. 752, as introduced on 31 January 1967, would amend section 203(b)(5) of the Interstate Commerce Act to expressly state that in providing for-hire transportation to non-members, the agricultural cooperatives exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm related traffic. The effect of such an amendment would be to eliminate the present exemption except in those situations where the back-haul traffic is farm-related. The amendment of section 203(b)(5) of the Act proposed in S. 752, as passed by the Senate on 4 June 1968, on the other hand, would place no such restriction as to the type of commodities that may be handled for non-members, but would limit presently authorized non-member traffic including transportation performed for the United States Government to an amount not to exceed 15% of the total interstate tonnage handled by such cooperatives during any fiscal year. Additionally, in order to assist the Interstate Commerce Commission in the enforcement of the cooperatives exemption, S. 752 as passed by the Senate requires that cooperatives shall give the Commission prior notice of its intent to perform transportation for non-members and for such purpose, make available all accounts, books, and records for Commission examination.

In letter to the Senate Committee on Commerce dated 24 July 1967 this Department opposed enactment of S. 752, as introduced, on the basis that the proposed amendment would totally deprive the Department of Defense of the use of transportation facilities of bona fide farm cooperatives and thus remove an effective element of price and service competition. For this reason the Department of Defense continues to oppose S. 752, as passed by the Senate.

While the amendments proposed in S. 752, as passed by the Senate, appear to have merit in that they should clarify the scope of the exemption and materially assist the Interstate Commerce Commission in its enforcement, this Department is particularly concerned with the provisions which would place a 15% limitation on non-member traffic. It is not known at this time whether this specific limitation considered together with the provision subjecting United States Government traffic thereto would materially reduce the ability of farm cooperatives to furnish transportation services to the Department of Defense. However, to the extent that this or any other percentage limitation would produce such a result, this Department strongly objects.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely yours,

STANLEY R. RESOR, *Secretary of the Army.*

Mr. FRIEDEL. I am certain that all of the witnesses here today are aware of the time limitations under which the Congress is now operating in an effort to clear up its schedule of desirable legislation before the advent of the conventions in August, and the fact that we therefore have only a short time this morning in which we can compile a record on this problem.

I trust accordingly that the presentation of statements will be kept within reasonable bounds, although the entire statements, of course, will be included in the record.

Our first witness this morning is the Honorable Virginia Mae Brown, Vice Chairman of the Interstate Commerce Commission.