applicability. But the legislative history indicates that the Congress was clearly trying to carve out some areas where they do not want us to go, do not want us doing this kind of analysis.

Chairman PROXMIRE. Is this the controversy about using current rates rather than costs in evaluating waterway projects?

Mr. MACKEY. That is the second paragraph of section 7(a). The first paragraph of section 7(a) lists the exemptions, and the second paragraph says specifically what rates shall be used in the evaluation of waterway programs and projects. It is the argument of current rail versus future waterway rates.

Chairman PROXMIRE. The requirement is that you use current rail rates, which would seem to me to be a transparently unfair comparison.

Mr. MACKEY. Obviously.

Chairman PROXMIRE. In fact, I voted against the Transportation Act creating your Department because I thought it was so unconscionable. I spoke very vigorously about this on the floor. Congress, as you indicated, had another view and they passed an act putting this kind of unfairness right in the law.

Mr. MACKEY. That was not part of the original administration proposal for the Department Act.

Chairman PROXMIRE. Will you submit for the record an answer to the following question: What are the primary constraints which now hinder the implementation of a sound economic analysis in your Department which could be relaxed by congressional action?

Mr. MACKEY. Yes, sir.

Chairman PROXMIRE. What kinds of legislation would you find most helpful in removing these impediments to sound economic analysis of the Department of Transportation expenditures?

Mr. MACKEY. I shall be glad to.

ANSWERS TO QUESTIONS ASKED BY SENATOR PROXMIRE OF MR. MACKEY

The questions were:

1. What are the primary constraints which now hinder the implementation of sound economic analysis in the DOT which could be relaxed by Congressional action?

2. What kinds of legislation would you find most helpful in removing these impediments to a sound economic analysis of DOT expenditures?

There are three primary features of DOT legislation which may operate as constraints to the implementation of sound economic analysis in the Department. These are:

1. Sections 7(a) and 4(b)(2)(B) of the Department of Transportation Act.
2. Laws relating to the Federal Aid Highway Program.
3. The Federal Airport Act.

Part I contains explanations of how each constraint might affect the implementation of sound economic analysis in DOT and how certain legislation could improve conditions. Part II contains a discussion of administrative and noneconomic considerations which might alter the nature of the legislation.

PART I: CONSTRAINTS ON IMPLEMENTATION OF ECONOMIC ANALYSIS

Provisions in the DOT Act

The language of Section 7(a) of the Department of Transportation Act limits the Secretary's role in developing investment criteria for the formulation and economic evaluation of proposals for the investment of Federal funds when those proposals are concerned with certain types of projects.

Section 4(b)(2) of the same Act is also pertinent. It states that "Nothing in