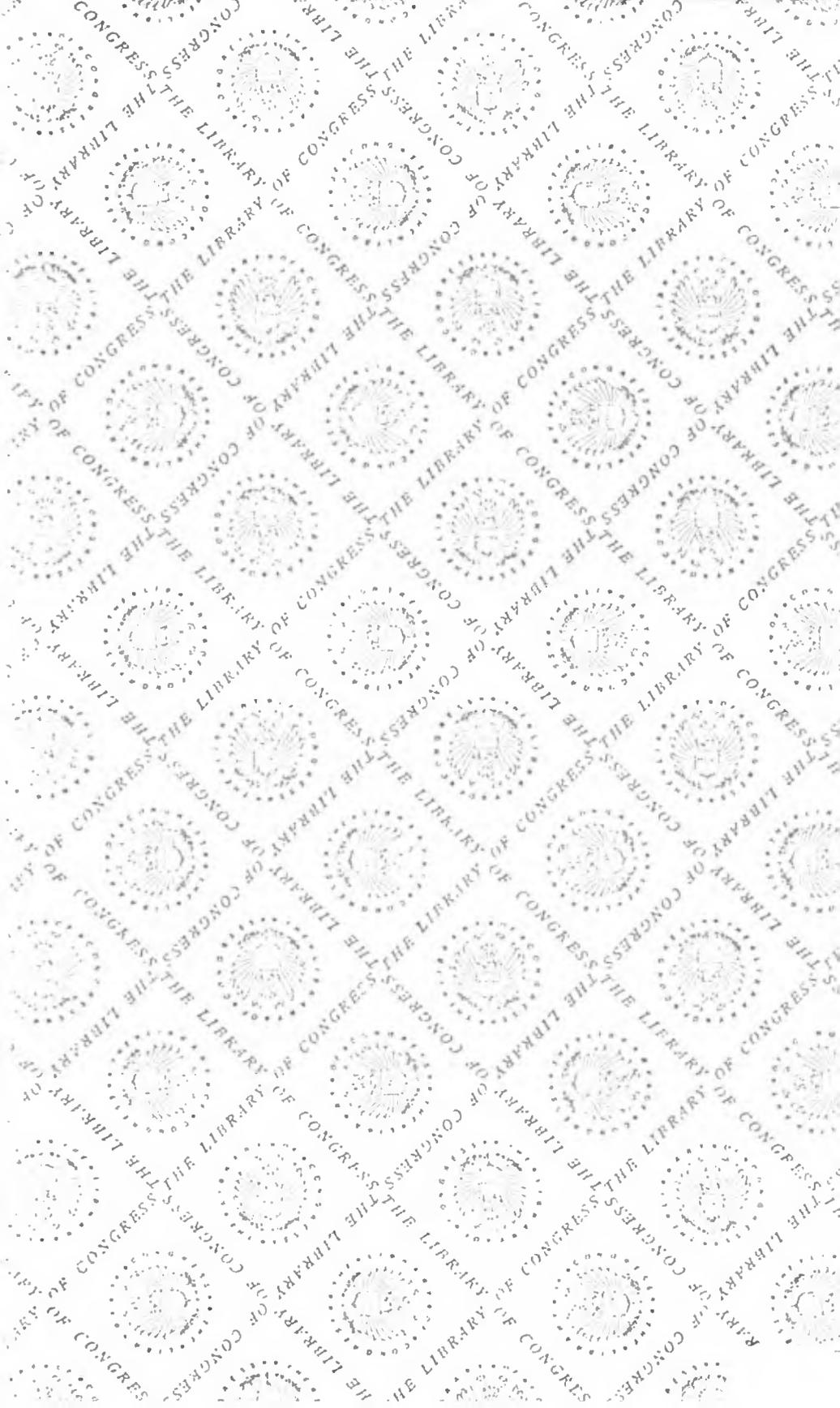


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INDEPENDENT TRUCKERS AND THE ENERGY CRISIS

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HEARINGS
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
AND THE
SUBCOMMITTEE ON TRANSPORTATION
AND AERONAUTICS
NINETY-THIRD CONGRESS
SECOND SESSION
ON
H.J. Res. 893
MATTERS RELATING TO THE ENERGY PROBLEMS OF THE
INDEPENDENT TRUCKERS

JANUARY 30 AND FEBRUARY 6, 1974

Serial No. 93-66

Printed for the use of the
Committee on Interstate and Foreign Commerce



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The Subcommittee on Transportation and Aeronautics held hearings on January 30, 1974, to gather information on the problems independent truckers were having in regard to the energy crisis. The full Committee on Interstate and Foreign Commerce held hearings on February 6 on a specific legislative proposal to alleviate the problems of high fuel costs for independent carriers. The proceedings of these hearings before both the subcommittee and the committee are printed together in one volume, as they are directly related.

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INDEPENDENT TRUCKERS AND THE ENERGY CRISIS

WEDNESDAY, JANUARY 30, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will come to order.

One of the most serious consequences of the energy crisis today is its effect on the transportation industry. This subcommittee plans to stay informed on the matter of how our various modes of transportation are coping with the crisis.

Today we are concentrating on the plight of independent truckers. The trucking industry is absolutely vital to the well-being of this Nation. When the free flow of commerce is disrupted, naturally we all suffer.

Particularly hurt by the fuel crisis today is the independent trucker. Collectively, the truckers compose a substantial portion of the trucking industry and are an integral part of our overall transportation industry.

Today we have requested the Interstate Commerce Commission and the Department of Transportation to appear before us and to make available to the subcommittee information relative to what their respective agencies are doing in regard to the situation involving the independent truckers and the trucking industry as a whole.

Many of us in the Congress have met individually with various groups of independent truckers. We recognize that while they are not well organized and they do not have the resources of their larger competitors to speak through large trade organizations, they do have legitimate reasons to appeal to their Government for assistance in this time of energy crisis. We want to have the benefit of their ideas and want to find out just what the agencies and departments of Government are doing about their situation.

Our first witness today will be Chairman George Stafford, of the Interstate Commerce Commission. Chairman Stafford, it is a pleasure to welcome you back to our subcommittee hearings.

**STATEMENT OF HON. GEORGE STAFFORD, CHAIRMAN, INTERSTATE
COMMERCE COMMISSION; ACCOMPANIED BY MRS. VIRGINIA MAE
BROWN, COMMISSIONER; FRITZ R. KAHN, GENERAL COUNSEL;
AND JOSEPH T. FITTIPALDI, CHIEF, SECTION OF RATES, OFFICE
OF PROCEEDINGS**

Mr. STAFFORD. Good morning, Mr. Chairman.

I have with me this morning Mrs. Brown, Commissioner Brown, who is Chairman of our Rates Division. She handles all our tariff rate filings that come in and has taken a very active interest in this whole matter, and then, of course, I have our general counsel with us, Mr. Fritz Kahn, and Mr. Fittipaldi, who is in our section of rates.

Mr. JARMAN. We appreciate your being with us and you may proceed in your own way, Mr. Chairman.

Mr. STAFFORD. You have requested my appearance here today in order to brief you on what the Commission is doing to modulate the effect of the energy crisis upon the Nation's surface transportation industry and those it serves. As yet, we at the Commission have been unable reliably to gage the depth of the crisis; nevertheless, there are visible signs of decreased fuel supplies and increased costs. Actions which we have begun we think will help minimize the adverse effects of those increased costs, while at the same time maximize energy conservation.

Last December, we instituted a rulemaking proceeding, Ex Parte No. 301, in which we sought the views and suggestions of any interested person as to any constructive legislation which we might propose to Congress concerning energy problems. Many representations have been received and the matter is receiving highest priority. We hope to release our recommendations very soon or within the time frame Congress may establish pursuant to legislation now pending before it.

In the meantime, under our existing authority, we issued an order last December in Special Permission Docket No. 74-1825 which provides a means by which increased fuel costs can be recouped expeditiously by affected carriers. Usually, carriers must publish rate changes 30 to 45 days before their effective date. Pursuant to this order, surcharges reflecting fuel cost increases may be published to become effective in 10 days. On January 10, 1974, an amendment to the December order was issued. The amendment clarified our intention that the person actually responsible for the payment of fuel is to receive the full increase in revenue derived from the surcharge. The new procedure is now in effect and has been utilized by a number of carriers.

In another proceeding, Ex Parte No. 55 (Sub-No. 8), we are looking at existing procedures for so-called gateway eliminations and have reached certain tentative conclusions regarding the practices of those carriers subject to gateway requirements, namely, irregular-route motor common carriers. Our proposed rules would provide that gateways would be eliminated where the most direct highway distance between the points to be served is not less than 80 percent of the highway distance between such points over the carrier's authorized routing through the gateway. Operations having more than a 20-

percent circuitry would be prohibited. Comments of interested persons have been received by the Commission, and its final report is being written.

Also, on November 23, 1973, a general policy statement was issued advising motor carriers that we will scrutinize applications for new or additional operating rights to ascertain whether the proposal will make the most efficient use of fuel. The statement urges all motor carriers only to seek authority practicable for balancing their operations and to seek none which would create empty vehicle operations.

Additionally, in Special Permission Docket No. 74-2000-M, we have granted permission for the filing of motor carrier substituted tariffs having the effect of facilitating the pooling of freight so that vehicles are loaded to capacity.

Informally, I have personally met with a number of representatives of the motor carrier industry, organized labor, and the independent owner-operators in order to explore what the existing difficulties are so that we, at the Commission, can attempt to resolve them within the framework of the existing law, or propose legislation to cover the problem areas.

Finally, we are maintaining close liaison with other Federal agencies in order to keep abreast of any new developments or problems which may arise.

We will continue our efforts to find ways to mitigate against any adverse effects resulting from the energy shortages, and stand ready, willing, and able to carry out any new mandates Congress may decide to give us.

That concludes my prepared statement. At this time I will be happy to answer any questions that you may wish to ask. However, before responding to your questions, Mr. Chairman, and those of the other members of the committee, I should like to take this opportunity to announce further action approved by the Commission today to ameliorate the effects upon shippers and carriers of the energy crisis.

I am pleased to reveal that a majority of the Commission has voted to revise the agency's rules to reimburse truck operators for their increased expenses of fueling their vehicles. We have instituted a rule-making proceeding, docketed *Ex parte No. MC-43* (Sub.-No. 2), to revise our leasing regulations by adding a new requirement that payments to owner-operators after the effective date of the revision be increased by the amount they are paying for fuel above the level prevailing approximately 9 months ago, on May 15, 1973.

The text of the proposed change will be published in the Federal Register, and interested persons will have 20 days to comment.

The Commission is concerned that the burden of escalating fuel costs has been borne immediately and directly by the trucker operators. All too often the division of rates upon which most of them are paid by the carriers for which they perform the transportation has failed to keep apace with the added expenses they have encountered. Our proposal today should assist in correcting this situation.

We in no way wish to intrude upon normal contract negotiations between the carriers and the owner-operators they utilize. But neither can we stand by and see the services rendered the shipping public by these transporters come to a halt because of inadequate payments to them by the carriers we regulate.

I have called Mr. H. Scott Byerly, of the Steel Haulers' Conference, to be in my office at 11:30 a.m. for a meeting, to advise him of the impact of our recent order and what he can do in the way of contacting members of his association to get them started with implementing our order as they can at this moment.

Thank you.

Mr. JARMAN. Mr. Chairman, with reference to the order to which you referred, from a practical standpoint, how soon do you anticipate that this will become effective?

Mr. STAFFORD. Well, we are putting it out on an expedited basis, and the order itself could become effective within 30 days after we publish it in the Federal Register.

We are giving 20 days for interested parties to comment in case there is something wrong with what we are proposing, something we can't foresee.

But the real thought I have in getting Bob Byerly, of the Steel Haulers' Conference, into my office this morning is to advise him of this action and to see that he gets with the members of his association and gets them moving right away.

Mr. JARMAN. How soon will the order be published?

Mr. STAFFORD. It will be—well, the order will be published within the next few days, just as soon as we can get it through our procedures. We just got a final vote in this morning.

Mr. JARMAN. Then it will become effective 30 days after publication?

Mr. STAFFORD. After the final publication. But the real point we are making here is that we are going to get the Steel Haulers' Conference representative into our office at 11:30 this morning where Mrs. Brown and I can meet with him and advise him that we want him to get busy with the companies he represents and get in touch with their drivers to advise them of what is going on here.

Mr. JARMAN. I understand. In your statement you mentioned the possibility of proposed legislation in the problem areas. Has the Commission reached—have you reached any tentative position or do you foresee legislative proposals at this time?

Mr. STAFFORD. We have not reached a tentative proposal, but we do foresee offering some suggestions under docket Ex parte No. 301.

When first introduced, this legislation called for our replying to Congress within 15 days after you passed the bill and it became effective.

The second that bill was introduced we immediately started calling for views. When Congress had not finished its work on it before the recess, we immediately extended the time for further views from other officials, or businesses, what have you, so that we could have a complete record on which to make a recommendation to Congress. But this is moving forward very well, and I think we will be ready very shortly.

Mr. JARMAN. Mr. Shoup?

Mr. SHOUP. Thank you, Mr. Chairman.

Good morning.

Mr. STAFFORD. Good morning, how are you, Mr. Congressman?

Mr. SHOUP. A question, Mr. Chairman, on the tariff, the procedures by which you are allowing the truckers to react to increased fuel cost.

Mr. STAFFORD. You mean under our expedited 10-day procedure?

Mr. SHOUP. Yes. Is this effective?

Mr. STAFFORD. I would like Mrs. Brown, chairman of the division that handles these cases, to answer that.

Mr. SHOUP. May I rephrase that? Do you feel that there is reaction, favorable reaction and that they are taking advantage of this? Is it accomplishing what it is designed to?

Mrs. BROWN. We have had approximately 100 filings in the energy expedited rate procedure that was implemented at the ICC about the middle of December.

Mr. SHOUP. My next question, then, would be this, what is the impact on the competitiveness and the loss of business, or the threat of loss of business by this unilateral increase of fuel consumption by the truckers compared to competitive lines? Do you find a reluctance there? Have you had a criticism on this procedure?

Mrs. BROWN. We haven't had a criticism of the procedure other than some think that the 10 days is too short a time to protest an increase. Actually the increases have ranged from, say, 0.6 or 0.7 to a requested 9 percent. The range being closer, hovering about 1 percent.

Mr. SHOUP. More directly then, my question is, Is this having an effect on the competitiveness of the independent truckers in competition with the rail lines by increasing their tariffs?

Mrs. BROWN. Well, the energy procedure is for rail also and they have filed.

Mr. SHOUP. They have filed?

Mrs. BROWN. They have filed for a 2.1-percent increase in the energy case only.

Mr. SHOUP. This is the expedited, the 2.1 percent?

Mrs. BROWN. Right.

Mr. SHOUP. Mr. Chairman, getting back to another question. The route adjustments that you refer to specifically in the gateway, have these been implemented as yet?

Mr. STAFFORD. No, we have not implemented those. Those are still in the process under rulemaking procedure.

Mr. SHOUP. Has it been published?

Mr. STAFFORD. Yes.

Mr. KAHN. The proposed rules were published, and the Commission is now preparing its final report.

Mr. SHOUP. In other words, the time for comment has expired?

Mr. KAHN. Yes.

Mr. SHOUP. Could you give us any estimate as to when the Commission will hand down a ruling?

Mr. STAFFORD. Not over 2 weeks for this to be ready to be voted on and to be published.

Mr. SHOUP. This is an energy fuel saving type thing?

Mr. STAFFORD. Yes.

Mr. SHOUP. I think it is commendable the way you are reacting to allow passing on the costs where they are occurring. Are there any other areas where you are working with the Energy Commission specifically or the Federal Highway Administration in some of their operating rules?

Perhaps the group of you working together could increase the efficiency of the operation. Is there anything specific in that area?

Mr. STAFFORD. I have been working lately with several of the departments to put together a package, so-to-speak, in an effort to be helpful and to solve these problems as quickly as we could.

Congressman Shoup, I don't recall whether you were here the last time I was here, I believe it was the middle of November. I then said there were other things that needed to be done in this area to better utilize the fuel we have, to help maintain a more stable price level per unit cost.

I, at that time, said that it was time for the railroads to start looking into some of their tariffs and file tariffs that called for full loads and full weights, that there were too many instances in which they were filing tariffs, admittedly at the request of the shippers, permitting partial loading. But the shippers have to start filling these cars, and I feel the same about the trucks.

I think it is time we started loading these trucks to the weights the highways of this country permit if we are going to maintain a reasonable price level on items being carried.

Mr. SHOUP. Mr. Chairman, if I may address this to Mrs. Brown, possibly a warning, or at least notification that I am sure there will be legislation coming out concerning cube and weight for trucks on the highways and that possibly being forewarned, you may be able to look into possible tariff changes that will react to this rather than going through the routine of getting the change in the cube and the weight and then having to come for a change in the tariff.

I have no further questions.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

It's nice to see you, Chairman Stafford. I have a question on page 3 of your statement.

You indicate your Ex parte 55 on elimination of gateways, have you limited this just to irregular route carriers? That is what you say in your statement.

Mr. KAHN. The gateway problem is peculiar to the irregular route carriers. The regular route carriers operate through so-called tacking points. With respect to these, the deviation rules and the super-highway rules that the Commission has outstanding are thought to be adequate to take care of those problems.

Mr. ADAMS. I understand that. This is what I am trying to get from your statement, which is, you believe with the regulated carriers now you have given ample flexibility to accomplish the two things that I understand are the only basis for a gateway, one, which is you want to be certain that the intermediate points are served rather than simply being bypassed.

In other words, you take a little of the bitter with the sweet, which is the regular route carrier. But you think you have flexibility now with full loads that they can use superhighways and don't have to go through gateways but you are still getting intermediate service. Is that part of the gateway rule 55 or do you have a separate set of rules?

Mr. STAFFORD. Yes, we do have separate rules.

Mr. ADAMS. Would you supply that?

Mr. STAFFORD. Yes, but we feel that is flexible enough now.

[The following material was received for the record:]

COMMENTS ON SUPERHIGHWAY AND DEVIATION RULES

During the period June 1973 through January 1974, 50 motor common carriers have filed 119 deviation notices, 36 of which used the severe fuel shortage as partial support for applicants' positions. Of those 36 notices, 13 (9 of which were filed after December 6, 1973) stated that the carriers' inability to obtain sufficient fuel was the primary purpose in seeking the shorter routes. Twenty-two of those 36 notices are still pending, but of those which have been decided, most of which were protested, 7 were granted and 7 were denied. In addition, protestants to several proceedings have argued that if applicants are allowed to institute new services in areas where motor transportation is already highly competitive, destructive competition and a concomitant waste of precious fuel would result.

It should also be noted that, pursuant to part 1042.3 of the Commission's Superhighway and Deviation Rules, motor common carriers of property may use superhighways in connection with their regular service routes *without notice to this Commission*, providing certain criteria are met. There is no way of estimating the number of carriers taking advantage of this provision.

Environmental factors, including the current energy crisis, are extremely important in the Commission's determination of deviation proceedings. However, our primary concern, under the rules, is to determine whether the applicant has met its burden of proof—a showing that no material change in the competitive situation will result from its use of a proposed deviation route.

[From Federal Register, Jan. 20, 1970.]

Title 49—TRANSPORTATION

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-65, Ex Parte No. MC-65 (Sub-No. 2)]

PART 1042—SUPERHIGHWAY AND DEVIATION RULES

Sec.

1042.1 Superhighway rules—motor common carriers of passengers.

1042.2 Deviation rules—motor carriers of passengers.

1042.3 Superhighway rules—motor common carriers of property.

1042.4 Deviation rules—motor carriers of property.

Authority: The provisions of this Part 1042 issued under 49 Stat. 546, as amended, 551, as amended, 552, as amended; 49 U.S.C. 304, 307, 038.

§ 1042.1 Superhighway rules—motor common carriers of passengers.

(a) *Superhighway certification—common carriers of passengers.* Upon the filing of an appropriate application for authority to operate over superhighways as defined below, upon the showing prescribed herein, and upon approval by the Commission, a motor common carrier of passengers establishing that it holds a certificate of public convenience and necessity, issued by the Commission pursuant to the provisions of part II of the Interstate Commerce Act, authorizing transportation over a regular service route or routes, will be granted appropriate certificated authority to operate over, and serve points on, the superhighways (including highways connecting such superhighways with the carrier's authorized regular service route or routes), between the point of departure from and the point of return to the carrier's authorized regular service route or routes: *Provided*, That use of such superhighway route will not materially change the competitive situation between such carrier and any other carrier or carriers.

(b) *Superhighway defined.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, and any direct existing highway, not a limited-access highway, located immediately adjacent to a planned superhighway.

(c) *Governing criteria.* (1) The criteria to be used in determining whether there would be any material change in the competitive situation shall include, among others, the following: (i) The mileage over the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes compared with the mileage over the carrier's authorized regular service route or

routes between the same points; (ii) the extent to which the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) parallels or extends in the same general direction as the authorized service route or routes of the carrier between the point of departure from and the point of return to the carrier's authorized regular service route or routes; (iii) the running times over the authorized regular service route or routes of the applicant and other certificated regular-route carriers between the point of departure and the point of return compared with the running times over the proposed route between the same points; (iv) the period of time during which schedules have been operated over the carrier's authorized regular service route or routes between the point of departure and the point of return together with the frequency with which such schedules have been operated; (v) the volume of local or overhead traffic which would be inconvenienced by use of the proposed route; and (vi) the quantum and frequency of single-line or joint-line service provided by other carriers.

(2) Proof that the distance over the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes is not less than 90 percent of the distance between such points over the carrier's authorized regular service route or routes shall constitute prima facie evidence that a material change in the competitive position would not result from the carrier's use of the proposed route: *Provided*, That such carrier shall not pick up or discharge passengers at any point not otherwise specifically authorized to be served by it. Where the unrestricted use of the proposed route would materially change any such competitive situation, but such change could be prevented by the imposition of an appropriate restriction (proposed by applicant and acceptable to the Commission), the Commission may authorize the use of the proposed route subject to such restriction.

(d)(1) *Application*. The application on the form prescribed therefor, must be verified and the original and two copies thereof must be filed with the Commission. It shall contain the following information:

(i) A complete description by highway designations of the carrier's authorized route between the point of departure and the point of return.

(ii) An excerpt from the carrier's operating authority or authorities (with reference to the pertinent subnumber or numbers) setting forth the exact description of the route as specified in subdivision (i) of this subparagraph, including service authorized at any intermediate points and any applicable restrictions or conditions in said authority or authorities.

(iii) A complete description by highway designations of other authorized routes, including service authorized at any intermediate points and applicable restrictions and conditions specifically pertinent to and affected by the departure from the authorized route specified in subdivision (i) of this subparagraph.

(iv) A complete description of the proposed route between the point of departure from the authorized route to the point of return.

(v) The actual mileages over all routes described in subdivisions (i) and (iv) of this subparagraph. Such mileages shall be computed between the actual junction points of the routes, whether such junction points are within or without city limits. Rand McNally road map mileages will serve as the official mileage guide where such mileages have been published. Where not published, measured mileage or available official publications will be accepted.

(vi) A map clearly depicting and identifying all routes described in subdivisions (i) through (iv) of this subparagraph.

(vii) A statement that the carrier will continue to provide adequate and continuous service from and to all points authorized to be served in connection with the appurtenant service route or routes.

(viii) The operating time over the appurtenant service route or routes between points affected by the proposed route as compared with that over the proposed route.

(ix) The volume of local and through traffic between the points of departure and return.

(x) A statement that a copy of the application, together with all attachments, has been served on those persons required to be served by these rules.

(2) *Service of application*. The application, with all attachments, must be served by mail or in person on the Commission, the district director of the Commission for the district in which the carrier is domiciled and for each district

in or through which the proposed operation will be conducted, and the State board or official having jurisdiction over motor carrier regulation of each State in or through which the proposed operation will be performed.

(3) *Publication of application.* A summary of the application will be prepared by the Commission and published in the FEDERAL REGISTER.

(4) *Protests and replies.* Any person may file with the Commission a verified protest together with two copies thereof, within 30 days after publication of the summary of the application in the FEDERAL REGISTER, showing that a copy thereof with all attachments, has been served upon the applicant. Such protest shall contain a recital of facts and information specifically demonstrating protestant's interest and, if the protestant is a carrier, shall contain detailed information relating to the competitive situation between the protestant and the applicant. The applicant may file a verified reply to any protest within 20 days after the due date of the protest, showing that a copy of the reply, with all attachments, has been served upon the protestant or protestants. Such reply shall be directed solely to the information contained in the protest or protests.

(5) *Hearing or other procedure to be followed.* Where a protest is filed, oral hearing will not be held unless the Commission determines, either upon its own motion or upon a showing of good cause by a party to the proceeding, that oral hearing is necessary. Unless such a determination is made, the issues will be decided upon a consideration of the material submitted with the application, the protest, the reply, and matters of which the Commission may take official notice, except that the Commission, if it so desires, may require the submission of additional facts from the parties.

(6) *Certificates.* Upon consideration of the matters specified in this part the Commission will determine whether the issuance of operating authority is justified. If it is determined that issuance of operating authority is warranted, the Commission will issue a certificate which will not be severable, except upon the Commission's authorization, by sale or otherwise, from the appurtenant service route or routes described in the certificate. Appropriate conditions will be imposed requiring the carrier to maintain reasonable and adequate service over the appurtenant service route or routes named in the application.

(c) *Through-bus operation.* Where two or more certificated regular-route motor carriers of passengers have been joining in the lawful performances of "through-bus" operations between a point on a certificated route of one such carrier, and a point on a certificated route of another such carrier, and there is wholly within the United States a superhighway or combination of superhighways (including highways connecting such superhighway or superhighways with the carriers' authorized regular service routes) between such two points, the use of which would afford a reasonably direct and practicable route between such two points and a safer, more convenient, efficient, or economical operation, without materially changing the competitive situation between such carriers and any other carrier or carriers, such carriers so performing such joint "through-bus" operation may upon application and approval by the Commission, use such superhighway or combination of superhighways (including highways connecting such superhighway or superhighways with the carrier's authorized regular service routes) as a service route for such joint "through-bus" service, with no service at any intermediate point thereon, except as authorized in their respective certificates, and with no service at the points of departure and return except as authorized in their certificates, and with no service at the point or points of interline except for interchange purposes only: *Provided, however,* That the application shall be executed and filed jointly by the carriers participating in the "through-bus" operation. Additionally, the carriers must specify with particularity the point or points on the proposed route where the operation, control, and responsibility of each carrier will begin and end; and whether an actual change of vehicles will take place at the point of interline or whether the operation will be performed in the same vehicle in a through movement under a leasing arrangement, in which case the carriers must supply details concerning the proposed vehicle interchange and related leasing arrangements.

(f) *Application, service, and publication thereof, protest and replies, hearing or other procedure to be followed, and the certificates.* The provisions of paragraph (d) of this section with respect to the application, the service and publication thereof, protests and replies, the hearing or other procedure to be followed, and the certificate to be issued shall be applicable to paragraph (c) of this section.

§ 1042.2 Deviation rules—motor carriers of passengers.

(a) *Applicability of rules.* These rules are promulgated under the provisions of sections 204, 206 (except 206 (6) and (7)), 207, and 208 of the Interstate Commerce Act, and govern the use of all highways, including the National System of Interstate and Defense Highways, by motor common carriers of passengers operating under certificates of public convenience and necessity issued by the Commission. These rules do not govern operations of regular-route motor common carriers of passengers which operations are wholly within an area including New York, N. Y., Rockland, Westchester, and Nassau Counties, N. Y., Fairfield County, Conn., and New Jersey. These rules do not supersede other rules and regulations of the Commission applicable to specific situations or operations.

(b) *Definitions.* As used in this section, the following words and terms shall be construed to have the following meanings:

(1) *Alternate route.* A designated highway or series of highways lying wholly within the United States over which a regular-route motor common carrier of passengers may operate for operating convenience only, serving no intermediate points and serving the termini only to the extent authorized over the existing appurtenant service route.

(2) *Bypass route.* A route designated by proper authorities for the general purpose of avoiding traffic congestion in a populated area or areas.

(3) *Deadheading empty vehicles.* The movement of empty vehicles incidental to either prior or subsequent transportation in interstate or foreign commerce subject to the Interstate Commerce Act.

(4) *Designated highway.* A highway identified for record purposes by a number, letter, or name, or as an "unnumbered county or State road," or in some other like manner.

(5) *Detour route.* The highway or highways designated by proper authority for public use while the highway or highways normally used between specified points is, or are, temporarily closed or restricted, as by reduced weight limits, or for repairs or construction, or for any other reason.

(6) *Deviation route.* Any of the route facilities and highways used by a motor carrier under authority of this section.

(7) *Emergency route.* A highway or segment thereof which is available for public use during periods of temporary emergency because of flood, slides, earthquake, or other like causes, which make a highway over which a motor carrier is authorized to operate temporarily impassable.

(8) *Point of deviation and return.* The point of deviation is the point at which a regular-route motor common carrier of passengers using or proposing to use a deviation route departs or proposes to depart from an authorized regular service route. The point of return is the point at which such carrier returns or proposes to return to an authorized regular service route.

(9) *Redesignated highway.* A highway to which there has been assigned a new designation, either number, letter, name, or other identifying reference, in lieu of a designation previously assigned thereto.

(10) *Regular service route.* A designated highway or series of highways over which a regular-route motor common carrier of passengers is specifically authorized to operate with provision in the carrier's certificate for service at terminal and intermediate points as specified thereon, as distinguished from an alternate route as herein defined. Such regular service route may be described as a single route in a carrier's operating authority or as two or more routes which are combined by joinder at a common service point or points.

(11) *Relocated highway.* A highway which has been constructed in a new location in lieu of an existing highway, or a segment or segments thereof, and which is intended to replace such existing highway, or a segment or segments thereof, for public use.

(12) *Service point.* A point authorized to be served by a carrier as distinguished from one through which such carrier may operate but without performing any service thereat.

(13) *Superhighway.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, or any direct existing highway, not a limited access highway, located immediately adjacent to a planned superhighway.

(c) *Departures from regular authorized routes.* Subject to the special rules, requirements, and conditions governing particular situations hereinafter stated, and subject also to the general conditions and requirements set forth in para-

graph (d) of this section, carriers subject to these rules are hereby authorized, in the circumstances hereinafter described, to depart from their regular authorized routes in the circumstances and to the extent hereinafter set forth.

(1) *Redesignated highway.* Where a highway, or a segment thereof, over which a carrier is authorized to operate is redesignated, the carrier shall so advise the Commission by letter, giving sufficient information regarding the old and the new designation, the points between which the highway designation has been changed, and the place or places where such highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

(2) *Relocated highway and abandonment of old highway.* Where a carrier is authorized to operate over a specified highway and thereafter that highway, or a segment or segments thereof, is or are relocated, and where the old highway or any segment thereof is no longer maintained for use by the general public, the carrier may operate over such relocated highway or relocated segment or segments under its authority without notice to the Commission of such change, but in so doing must continue to serve as intermediate points on the new highway, those points previously authorized to be served as intermediate points on the old highway.

(3) *Relocated highway and maintenance of service over old highway under new designation.* (i) Where a carrier is authorized to operate over, and to serve points on a specified highway, and thereafter that highway, or a segment or segments thereof, is or are relocated but the old highway is maintained for use by the general public under a new designation, the carrier shall not without first obtaining appropriate authority from the Commission, transfer its operations to the relocated highway or relocated segments thereof but must continue to operate over the old highway and advise the Commission by letter of the change in the designation thereof furnishing the same information as required in connection with subparagraph (1) of this paragraph. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

(ii) Where a carrier is authorized to operate over a specified highway, but is not authorized to serve any point on such highway and thereafter such highway, or a segment or segments thereof, is or are relocated, but the old highway is maintained for the use by the public under a new designation, the carrier may, if it so desired use as its operating route only the new or relocated highway, provided it promptly advises the Commission by letter of such change, giving descriptions of the old and new highways between the points involved and the other information required by subparagraph (i) of this paragraph.

(4) *Bypass route.* Where a carrier is authorized to operate over a regular route, either service or alternate, and a bypass route has been designated to avoid congestion over the regular route, such carrier desiring to use such a bypass route as an alternate route may do so regardless of the ratio of the distance over such bypass route to the distance over the regular route between the point of deviation and the point of return without prior notice to the Commission, subject to the following conditions: Not later than 5 days after operation over the bypass route has begun, the carrier shall give notice of such operation to the Commission, the district director of the Commission for the district in which the carrier is domiciled and for each district in or through which the operation is or will be conducted, and the State board or official having jurisdiction over motor carrier regulation of each State in or through which the operation is or will be conducted. This notice must contain the following information:

(i) A complete description by highway designations of the carrier's authorized route between the point of deviation and the point of return, including authorized off-route points:

(ii) A complete description by highway designations of its proposed deviation route between the point of deviation and the point of return;

(iii) A map on which there shall be shown so much as may be practicable of the information required by subdivisions (i) and (ii) of this subparagraph;

(iv) A statement that the carrier shall continue to serve points authorized.

(5) *Bridges, tunnels, and ferries.* Where a new bridge or tunnel has been constructed to replace an old bridge, tunnel, or ferry, to avoid circuitry, or to eliminate a hazardous curve or grade a regular-route carrier having authority to use the old facility and desiring to use in lieu thereof such new bridge or tunnel and the approaches thereto, may do so, subject to the applicable safety regulations and subject also to the conditions and requirements set forth in subparagraph (4) of this paragraph.

(6) *Detour and emergency routes.* Where a highway over which a carrier is authorized to operate is temporarily obstructed or rendered unsafe by flood, slides, earthquake, or other like causes over which the carrier has no control, the carrier may use any other practicable highway to continue rendering service to points on its authorized route. If a highway over which a carrier is authorized to operate is closed or subjected to weight or other restrictions by proper authority and another route is designated by such authority for use by the public as a detour route, the carrier may use such detour route in lieu of its authorized route. If the distance over the emergency or detour route is less than 90 percent of the distance over the authorized route and if use of the emergency or detour route will continue for more than 30 days, the carrier shall provide the notice set forth in subparagraph (4) of this paragraph.

(7) *Deadheading empty vehicles.* A motor carrier may deadhead empty vehicles over any highway, the use of which is necessary or desirable to accomplish a reasonably direct and practicable movement thereof between any two points incidental to either prior or subsequent transportation in interstate or foreign commerce subject to the Interstate Commerce Act.

(8) *Service at military installations.* (i) If there exists an entrance or gate to a military installation which is within the limits of the authority held by a motor carrier and the carrier with the consent and approval of the officer in charge is openly, lawfully, and regularly (as distinguished from surreptitiously, sporadically, or infrequently) using such entrance or gate in the rendition to or from the installation of (a) a general transportation service or (b) a specialized or limited service, and if such entrance or gate is by appropriate authority closed, or restricted against particular traffic or if for some other reason beyond its control the carrier is unable to continue to use that entrance or gate for the same purpose as in the immediate past, it may, subject to the general conditions and requirements set forth in subparagraph (4) of this paragraph, use other entrances or gates in continuing to serve the installation in the same manner and in the rendition of the same type of service as was theretofore performed through the closed or restricted entrance or gate.

(ii) This subparagraph shall not be construed by any carrier as authority for the rendition, through an entrance or gate which is located outside the limits of its authority, of any service which was in fact discontinued prior to the closing or restriction of the authorized gate or entrance, or any service essentially different from that rendered through the gate or entrance located within the limits of its authority immediately prior to the closing or restriction thereof.

(9) *Deviations—alternate routes without certificate—common carrier.* (i) Where a regular-route motor common carrier of passengers is authorized to operate over a regular route and there is wholly within the United States another highway which affords a reasonably direct and practicable route between any two points on such regular route, it may, subject to the general conditions and requirements set forth in paragraph (d) (1) through (5) of § 1042.1, except that the notice and any protests and replies thereto may be in letter form and need not be verified, and need not be served on official governing bodies of local points, use such other highway as an alternate route for operating convenience only and with no service at the termini except as otherwise authorized, in the manner and to the extent, as follows:

Where such carrier is authorized to operate over a regular route and there is a highway or highways which may be used as an alternate route between two points on the carrier's regular route regardless of the ratio of the distance over such alternate route between the point of deviation and the point of return to the distance over the carrier's regular service route between the same points, and regardless of whether or not such alternate route crosses or intersects or passes over or under any other specifically authorized service or alternate route of the carrier at any place intermediate to the points of deviation and return: *Provided*, That use of the alternate route will not materially change the competitive situation between such carrier and any other.

(ii) Proof that the mileage over the proposed alternate route between the point of deviation and the point of return to the carrier's authorized service route or routes is not less than 90 percent of the distance between such points over the carrier's authorized regular service route or routes shall constitute prima facie evidence that a material change in the competitive position will not result from the carrier's use of the proposed alternate route.

(iii) If a protest has not been filed within 30 days from the date of publication of notice of the proposed operation in the FEDERAL REGISTER, the operation may be commenced immediately thereafter subject to the provisions of paragraph (d) (5) of this section. In all cases in which protests are filed to a proposed new

operation, the applicant may not commence operation over the route or routes applied for until an appropriate order is issued by the Commission.

(d) *Miscellaneous conditions*—(1) *Failure to give notice or defective notice.* Where an application for a deviation is required under paragraph (e) (4), (5), (6), or (8) of this section, and such notice is not timely filed and served as required, any deviation operation begun prior to the actual filing and service of the application is unauthorized and where an application, though filed, is defective for want of required information or insufficient service or for any other reason, it shall be subject to rejection and if rejected, any deviation operation covered thereby which has been begun shall immediately be discontinued and shall not be resumed until a sufficient application has been filed, and served on interested parties as required by these rules, and the carrier has been notified by the Commission that the operation may be resumed.

(2) *Reasonable and adequate service.* The right to operate over a deviation route which is subject to the general conditions and requirements set forth in these rules shall continue only so long as the carrier is performing, when required by this part, reasonable and adequate service over specifically authorized routes, and only so long as the conditions set forth in these rules are observed.

(3) *Certification.* Each notice, protest, and reply filed under these rules shall contain the following certification:

I certify that I am aware that anyone who, in any matter within the jurisdiction of any agency of the United States, intentionally makes or uses any false, fictitious, or fraudulent writing or document, may be subject to prosecution and fined up to \$1,000 and imprisoned for up to 5 years (18 U.S.C. 1001).

(4) *Other remedies.* Applications seeking authority to conduct operations which could be performed following an appropriate filing under these revised deviation rules, will, in the absence of good cause shown, be subject to dismissal by the Commission.

(5) *Commission may forbid deviation.* The Commission may forbid the commencement of operations over any deviation route under this part, or require discontinuance of any such operations already commenced, whenever in its opinion such deviation results in inadequate service over specifically authorized routes, or is unreasonable, or otherwise repugnant to the public interest, or is not in harmony with the general purpose and intent of the rules and regulations established by this part.

(6) *Prior filings.* Motor carriers of passengers lawfully utilizing any deviation route or facility referred to herein pursuant to a prior notice heretofore filed shall not be required to file any further notice with the Commission concerning the use of such route, facility, or facilities.

(7) *Severability of deviation routes.* Operations over approved deviation routes shall not be severable by sale or otherwise from the underlying certificated authority to which such operations are appurtenant. Sale, lease, or other transfer of said underlying certified authority shall have the concurrent effect of selling, leasing, or otherwise transferring any approved deviation routes appurtenant to such certified authority.

Mr. ADAMS. Explain then why a regular carrier must go through a gateway at all. I know it is traditionally from the original request and the original basis on which they got their certificates. I know this has grown up, I know it is very controversial and I know it is historical, but I gather from this that you are changing that, is that correct?

Mr. STAFFORD. Yes; and we will eliminate the requirement for observing the gateway for irregular route carriers where there is not more than 20-percent circuitry involved.

Mr. ADAMS. You will allow them direct route authority then?

Mr. STAFFORD. Yes.

Mr. ADAMS. Have you studied the impact of this on the regulated carriers, is that what ex parte 55 has been about, Mr. Chairman?

Mr. STAFFORD. Yes; this has been gone into at some length, and I must admit there are some concerns.

Mr. ADAMS. That is what I want to ask. I am not asking if everybody is satisfied but as far as the regulated system which is required to call on intermediate points—

Mr. STAFFORD. That is right.

Mr. ADAMS.—What have you concluded now as to the effect of running in between? You are going to let it happen and let it go for a while and see if it works okay?

Mr. STAFFORD. Congressman, on advice of counsel, I must say that we are in a proceeding that—

Mr. ADAMS. I see, your proceeding is continuing on that. You indicated in prior questioning that you had concluded it and sent out proposed rules.

Mr. STAFFORD. There are no votes on it yet.

Mr. ADAMS. I am sorry, I misunderstood your answer to Mr. Shoup, I thought you were explaining it had been concluded.

Mr. KAHN. The proposed rules were published early in December. We received comments about December 15, and the Commission is now considering them in light of those comments.

Mr. ADAMS. Thank you, I understand now.

The second question I have, my last one, is I understand one of the major problems of the independent owner-operated carrier now is the fact, simply, of unavailability of fuel supplies at the so-called truck stops which prevents their operation from continuing through.

The stronger, bigger—I don't say all regulated are stronger than all irregular, but anyway the stronger carriers who have their own supply arrangements are able, therefore, to both have their own supply arrangements and compete on the highway which is causing these jam ups. Where are you with that?

Mr. STAFFORD. I am not sure I got the last part of that.

Mr. ADAMS. What I am saying is that you have two systems of supplying fuel to the trucking industry, the home base situation with a large enough established carrier and then the truck stop operation where everyone pulls up to the truck stop and in the past has bought diesel fuel at a reduced price.

Now one of the problems that we are told occurs is that the independents who do not have their own storage facilities are then left competing with those who do have at the truckstops and what has occurred is that there is not enough fuel to carry them over their route.

Mr. STAFFORD. That is right.

Mr. ADAMS. I am not telling you which side to go on, but what are you doing?

Mr. STAFFORD. There is competition because of the cutback in the amount of fuel the regular route carriers are getting. There are times they run short, and their trucks have to stop in at the truckstops to take care of their requirements.

Mr. ADAMS. Are you, because of your particular expertise on the Commission, feeding into the Federal Energy people the pattern of operation throughout the United States so that the allocation system meets this point? It seems to me the left hand is not talking to the right hand which is causing your spot shortages.

Mr. STAFFORD. I have been in meetings the last 2 weeks, and this is one of the problems we were discussing at some length. I am of the opinion that it will be spoken to in a press conference this morning by Mr. Usery, including what the supply will be.

Mr. ADAMS. That would be nice, Mr. Chairman.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Podell?

Mr. PODELL. Thank you, Mr. Chairman.

I was just wondering, Mr. Chairman—good morning to you, by the way—these new proposals, have you any idea whether they will result in increased costs to the consumer?

Mr. STAFFORD. It can't help but increase the cost to the consumer, although on a unit basis there is not really that much of an increase, and, if they are permitted to increase the loads that the truckers carry, then the unit cost will not be increased by that much.

Mr. PODELL. Well, assuming that you are not able to increase the unit load, but assuming things continue as they are—

Mr. STAFFORD. Costs of transportation will go up and rather appreciably because of the rapidly escalating costs of fuel.

Mr. PODELL. Could you give us some idea as to how much or by what percentage of increased costs this would reflect itself for the consumer over the period of a year?

Mr. STAFFORD. It actually would be rather slight. On a per unit base the increases just don't come out to be that much.

Mr. PODELL. You say that despite the fact—

Mr. STAFFORD. Despite the facts of the escalating fuel prices. However, you do know the Government will not permit increases in the cost of their fuel—so I am advised—more than once every month.

So it is trying to offer some guidance in here, so that people can make plans for the increase.

Mr. PODELL. Well, let's take the cost of fuel as of December 1973 and the cost of fuel as of December 1972.

Do you have any idea what increased costs there have been to the average truck operator in that 1 year for fuel alone? Have you a percentage increase?

Mr. STAFFORD. I have forgotten the percentage but it is a rather sizeable increase. However, the cost of fuel to the regular-route operator amounts to only some 5 percent of his costs, that is the regular-route operator.

For the owner-operator, it is a greater percentage. I don't know just what it is, but it is a considerably greater percentage of their total operating cost.

Mr. PODELL. Based upon their operation, you couldn't give us a ball park guess? It has to reflect itself in greater costs to the consumer.

Mr. STAFFORD. I don't know what the increase has been. I will look that up for you and supply it for the record, if you would like.

Mr. PODELL. I would appreciate it.

Mr. STAFFORD. Fine.

[The following material was received for the record:]

ESTIMATED IMPACT OF FREIGHT RATE INCREASES AND INCREASED FUEL COSTS ON RETAIL PRICES

On February 7, 1974 the Commission permitted regulated motor carriers to increase rates and charges by as much as 6 percent to off-set rising fuel costs. The corresponding increase for railroads, granted in January 1974, was 2.1 percent.

The attached table I shows representative consumer commodities and the estimated percentage in the retail price which covers transportation costs. The third column sets forth the estimated percentage impact on the retail prices of these goods occasioned by rising fuel costs, assuming these goods move by truck. Referring to table I the increases in truck fuel costs translates into only 1.4 mills per dollar in the retail price of tobacco products, and 4.2 mills per dollar in the retail price of household appliances. The cost of building a \$20,000 home would increase by an estimated \$72.00.

With respect to the price of food, the situation is quite similar. Referring to the attached table II, there are listed various food categories, their average retail prices, transportation costs, and estimated impact of fuel cost increases on the retail prices. Pertinent here is the fact that all food products do not move in regulated transportation. However, assuming a 6 percent rise in motor carrier transportation costs as a result of fuel price increases, the impact on the retail price of the listed commodities would be the amounts shown in the last two columns.

These fuel cost impact estimates assume that the goods move by motor carrier, and that the motor carriers will elect to apply for the full 6 percent permitted by the Commission. However, because of competitive pressures, or because an individual carrier's fuel cost may have increased less than the average, some carriers may elect to increase their rates by less than 6 percent. In that event, and also to the extent that the commodities move by rail, the impact of the rise in fuel costs will be correspondingly less than that shown.

TABLE I.—ESTIMATED IMPACT OF RECENT FUEL-RELATED FREIGHT RATE INCREASES ON RETAIL PRICES

(In cents)

Commodity group	Transportation cost per dollar of retail value ¹	Impact of fuel cost-related
		6-percent rate increase per dollar of retail value ²
Residential construction.....	6.0	0.36
Tobacco products.....	2.3	.14
Apparel.....	3.7	.22
Household furniture.....	6.0	.36
Farm machinery.....	5.6	.34
Household appliances.....	7.0	.42
Radio and TV sets, etc.....	4.6	.28
Motor vehicles and equipment.....	6.0	.36
Food products, domestic ³	5.2	.31

¹ "Input-Output Structure of the American Economy, 1963," Survey of Current Business, November 1969, updated to December 1973, using December 1973 consumer and wholesale price indexes and freight rate increases granted by the ICC since 1963.

² Based on 6-percent maximum increase granted regulated motor carriers by the Commission to offset rising fuel costs in Special Permission No. 74-2525. This rate increase is permissive, and carriers may choose to apply a smaller increase where dictated by competitive pressures. The corresponding increase granted railroads was 2.1 percent in January 1974.

³ U.S. Department of Agriculture, Economic Research Service, 1974.

TABLE II.—ESTIMATED IMPACT OF INCREASED TRANSPORTATION FUEL COSTS ON RETAIL FOOD PRICES

Item and quantity	Retail ¹ price (cents)	Transportation cost ²		Impact of fuel cost-related 6 percent rate increase ³	
		Amount (cents)	Percent of retail value	Amount (cents)	Percent of retail value
Butter (1 lb.).....	100.2	2.0	2.0	.12	.12
Cheese (8 oz.).....	66.8	1.9	2.8	.11	.16
Milk (½ gal.).....	73.1	3.5	4.8	.21	.29
Beef (1 lb.).....	142.5	5.1	3.6	.31	.22
Chicken (1 lb.).....	54.5	2.3	4.2	.14	.25
Turkey (1 lb.).....	89.6	1.5	1.7	.09	.10
Eggs (1 doz.).....	82.5	4.1	5.0	.25	.30
Florida oranges ⁴ (1 doz.).....	127.8	8.6	6.7	.52	.40
Apples ⁵ (1 lb.).....	33.0	3.9	11.8	.23	.71
Canned tomatoes (1 can).....	25.9	.9	3.5	.05	.21
White bread (1 lb. loaf).....	31.5	.92	2.9	.06	.17
Corn flakes (1 lb.).....	44.4	2.8	6.3	.17	.38
Market basket of fresh fruits and vegetables.....	146.5	20.1	13.7	1.21	.82

¹ Bureau of Labor Statistics, retail prices, November 1973.

² "Cost Components of Farm-Retail Price Spreads for Foods," technical study No. 9, National Commission on Food Marketing, 1966; updated by ICC, Bureau of Economics to November-December 1973. This includes both local and interstate transportation.

³ Based on the 6-percent maximum increase in regulated motor carrier rates granted by the Commission to offset rising fuel costs in special permission No. 74-2525. This rate increase is permissive, and carriers may choose to apply a smaller increase where dictated by competitive pressures. The corresponding increase in railroad rates was 2.1 percent in January 1974.

⁴ Composite from ¾ steak, ¾ roast, ¾ hamburger.

⁵ Florida oranges in Atlanta, Chicago, and New York.

⁶ Washington apples in New York and Chicago.

Mr. PODELL. Another point: Have you given any thought to an idea that has been going around for stabilizing the costs of fuel by having the Government actually purchase the fuel and then resell it to the various distributors? Have you heard any comment about that?

Mr. STAFFORD. In the first place I must admit that my hands are pretty full without worrying about that problem, but I would doubt the advisability of anything of that kind. I think I would be opposed to it if I had a vote on it.

Mr. PODELL. What about the possibility of some type of Government control with regard to the entire fuel operation?

Do you think that would help the problem if the Government, in addition to its ordinary program of allocations, et cetera, would control both pricing and distribution? Would you give any consideration to that?

Mr. STAFFORD. I believe in a minimum amount of regulation no matter what you are talking about. I, perhaps, am one of those who feels that the price level will seek a level that we can all live with and become stabilized. But I must admit by the same token I have not made a study of this. All I know is my gas bill keeps going up every month, but I am not alarmed by it.

Mr. PODELL. It seems odd that a chairman of a regulating agency would believe in a minimum amount of regulation.

Mr. STAFFORD. There was a time when I didn't believe we needed any, but then I came to the conclusion that we wouldn't have any service in this country if we didn't have.

Mr. PODELL. Without any regulation, we wouldn't have an ICC, right? I would appreciate it if you could give us these figures on increased costs because I, for one, am fearful that all we are doing now is feeding this so-called tiger of inflation.

Mr. STAFFORD. There is no doubt about the fact that this is a rather important factor in the inflation.

Mr. PODELL. Has your Commission given any consideration to a study which perhaps would make the entire shipping industry a more reasonable one as far as the costs of carrying goods is concerned, perhaps by a consolidation of effort, or by expansion? I wondered if any studies are presently going on?

Mr. STAFFORD. Actually the regular-route trucking people have an experimental program going now on just such a thing as this, and we have granted them a special rate on this kind of procedure for the shippers and the carriers to work out an arrangement of this kind. It's in the experimental stage, so we don't know whether it will work.

Mr. PODELL. Is this a study initiated by your Commission or is this a study that has been initiated by the industry itself?

Mr. STAFFORD. The industry has initiated this effort, and we have accepted a proposed tariff in this area. I am not familiar with all the details, but I do know that the regular-route people have been working on this to cut down on the use of fuel oil.

Mr. PODELL. Don't you think it would be an appropriate area for study by the Interstate Commerce Commission?

Mr. STAFFORD. I think it perhaps would be. I am loaded with studies right now on the northeast railroads. Congressman Adams has us running both ways on that.

Mr. PODELL. Congressman Adams, I wish you would leave him alone for a little while.

Thank you, Mr. Chairman.

Mr. JARMAN. Are there any further questions?

We wish to thank you and your colleagues, Mr. Chairman, for being with us.

Our next witness represents the Department of Transportation, the former Governor of Nebraska, Norbert Tiemann, Administrator of the Federal Highway Administration.

STATEMENT OF HON. NORBERT TIEMANN, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY KEN PIERSON, BUREAU OF MOTOR CARRIER SAFETY; HUGH O'REILLY, CHIEF COUNSEL'S OFFICE; AND JACK WILKES, CHIEF, BRIDGE DIVISION

Mr. TIEMANN. Thank you very much, Mr. Chairman.

If I might introduce my associates, Mr. Hugh O'Reilly from the chief counsel's office, and Mr. Ken Pierson from the Bureau of Motor Carrier Safety, and Jack Wilkes, chief of the bridge division of the Federal Highway Administration. All of us are from the Federal Highway Administration.

Mr. JARMAN. Do we understand you do not have a prepared statement?

Mr. TIEMANN. I have a very brief opening statement, off-the-cuff remarks, and then we will submit to questions very quickly.

Mr. JARMAN. Proceed.

Mr. TIEMANN. During the first part of December 1973, it was brought to Secretary Brinegar's attention that the independent owner-operator was facing a situation he could not cope with unaided. Increased fuel costs, decreased highway speeds and decreased fuel availability combined to virtually assure his economic ruin. Individuals claiming to represent large segments of the nonorganized owner-operator segment met with the Secretary and his staff, and others, to seek assistance, demand assistance, or otherwise present their case.

Shortly after having the situation brought to his attention, Secretary Brinegar took positive action to assist the complaining truckers. Trucker complaints were expressed differently by each representative but all had a common theme—that essentially was, "we need more fuel and a way to pay for it to operate profitably in our operations."

The vast majority of the grievances are beyond the authority of the Department of Transportation. Some would require legislation, some regulatory change by other agencies, and others controversial regulation by the Department of Transportation.

As of January 21, 1974, specific administration action to assist truckers could be summarized as follows:

First, investigation of truckstop fuel pricing policies by the Internal Revenue Service. During the week of January 14, over 600 truckstops were checked with 92 possible violations detected.

Second, establishment of a diesel fuel allocation which should assure availability of adequate fuel for this vital segment of our industry.

Third, investigation of the fuel distribution system to assure that supply will match allocation.

Fourth, expedited rate procedures by the Interstate Commerce Commission to enable quicker recovery of higher fuel costs, as Chairman Stafford commented on just a moment ago.

In addition, any closer, of course, to the activities of the Department of Transportation, and specifically the Federal Highway Administration, the Department continued in several areas, notably the matter of studying proposed legislation having to do with increased truck weights and lengths and increased hours that truckers would be able to drive.

The Department keenly appreciates the important role that truck transportation plays in the Nation's economy and well being.

We have acted as an ombudsman for the trucking fraternity, interceding with FEO, CLC, and ICC for them. We have stopped short of gathering all interested agencies, parties, et cetera, together to resolve their problems.

The Department of Transportation has, of course, been very sympathetic to the legitimate complaints of truckers and has attempted to bring appropriate administration force to bear on these complaints, and with only some limited degree of success.

Mr. Chairman, we would be delighted to try to respond in some meaningful way to any questions that the committee might have.

Mr. JARMAN. Governor, how do you view the present situation as to the problem area? What is the Department's analysis of where we are and how grave is the problem?

Mr. TIEMANN. Well, we think the situation is rather grave with regard to the independent owner-operators. The difficulty we have in meeting with several of these so-called groups—and I guess I should be completely candid—each group the Secretary has met with and that we have met with all indicate that they are the spokesmen for the independent owner-operators. I guess I would also have to be factual and say, if each group that alleges they represented x number of operators were added together would probably total more than the total operators in the country. That is one.

Second is the wide variety of problems that each one has brought to us but generally it comes down as I indicated, that we need more fuel at a lower cost or stabilized price and we need to make a profit.

There were all sorts of complaints and grievances that came to us. The big bulk of them we simply can't do anything about. It requires the combined effort on the part of a number of agencies and in some instances legislative exchange.

But we do view, Mr. Chairman, the plight of the owner-operator. They are in a profit squeeze. Without question their profits are down next to nothing. This we firmly believe.

They have a unique situation as opposed to the regulated carriers. I guess, to answer your question as specifically as I can, we see this situation as being rather an intolerable one as far as the owner-operator is concerned.

Mr. JARMAN. Does the Federal Highway Administration carry the primary responsibility for the Department's role in this problem?

Mr. TIEMANN. Secretary Brinegar and members of his staff met with the group of truckers that came in and since that time we have met with them on a continuing basis, all the various groups, so I guess,

yes; we are bearing the burden along with a member of Secretary Brinegar's staff, who is to coordinate the activities of all the agencies within DOT bearing on the owner-operator problems.

Mr. JARMAN. In addition to the meetings that you have had and the recognition of the basic problem, what other plans, what ongoing plans do you have for staying on top of the problem and trying to help on the solution to it?

Mr. TIEMANN. As each of these groups came in and submitted to us their grievances, we would analyze their grievances to the extent that we could do something about them, some that another agency would be required to do, some that nobody could do anything about. Those that we could respond to in a meaningful way from the Federal Highway Administration or DOT standpoint, we immediately took that action, as I indicated in my previous comments.

Some would require additional time. As an example, we are now studying several proposals for increased weights on trucks in the interstate system. This was one of the requests that all of the truck groups made. We are looking at several proposals. We have not yet come down firmly on any one side. We will be making recommendations to the Secretary for transmittal to the administration for a position on increased weights.

I use that only as an example. There are a couple of other areas. One is the matter of driving hours.

Mr. JARMAN. Mr. Shoup?

Mr. SHOUP. Thank you, Mr. Chairman.

Good morning, Governor.

Mr. Tiemann. Good morning, Mr. Shoup.

Mr. SHOUP. As I said to Chairman Stafford, I think it is commendable the way you are reacting to the short-term solution but I am very interested in the long term. Of course you speak briefly to it.

My question would be, when do you feel you will be able to recommend legislation to Congress that will correct some of the deficiencies we have at the present time and allow for more efficient use of the freight industry and of the highways?

Mr. TIEMANN. You are speaking now specifically, Mr. Shoup, about weights and widths?

Mr. SHOUP. Let's get specific. I am prepared to enter legislation now and I am waiting for some assistance from your department and comments and specifically to go to—well, it's patterned, I think, after the 1967 bill in which there is 20,000–34,000 axle limit and probably a new bridge formula under schedule B. Have you any immediate comments or anything you are going to recommend in that line?

Mr. TIEMANN. Well, we have indicated that we have several proposals under study and this is one of them. We look with some degree of favor on this. I guess I should report to you also that some of the other segments, some State governments, and some industry look upon this favorably also.

A meeting of the Executive Commission of the American Association of State Highway and Transportation Officials, that up until this year had taken sort of a mixed view of increased weights, have now voted unanimously in favor of support of the formula you just indicated.

Mr. SHOUP. Did they take a stand on cube also?

Mr. TIEMANN. No.

Mr. SHOUP. May I ask, and this is a technical question on schedule B, is it set by regulation or legislation?

Mr. PIERSON. The formula is now a policy of AASHTO but we are studying the possibility of including such a formula in a revision of section 127 of title 23.

Mr. SHOUP. At the present time that is merely regulation policy?

Mr. PIERSON. Yes, sir.

Mr. SHOUP. It could be changed by the Department at its will?

Mr. PIERSON. No, I am sorry, the policy is that of the American Association of State Highway and Transportation Officials which are advisory to the State highway departments and it is one that is used in a great number of State statutes.

The only Federal statute is a limitation on the weights of the interstate system and that is in terms of those weights which were in effect in 1956 and it makes no mention of the formula for table B.

Mr. SHOUP. But if we change the limits on weight, it will be necessary then to put into legislation, Federal legislation, a change in the bridge formula?

Mr. PIERSON. As it applies to the interstate system.

Mr. SHOUP. Another proposal has been made, Governor, and that is that the use of the interstate should be enlarged by the incorporation of what is commonly called truck trains.

In other words, similar to the operations that are now being tried or are being used at the present time in California. Is there any contemplation by your department, your administration, to authorize this type of operation on the interstate?

Mr. PIERSON. The study that we have underway includes consideration of doubles and triples and their net economic benefit as well as any probable safety benefit.

So we have not reached a conclusion or recommendation in terms of whether to include that in any proposal which we would make.

As you know, the present Federal limitation is silent as to lengths, and triples and doubles are length considerations.

Mr. SHOUP. They are legal on the interstate though, if the State allows them?

Mr. PIERSON. To the extent authorized by the laws in effect in 1956.

Mr. SHOUP. Would you recommend that this basic concept of State right to do this be retained but updated from the 1956?

Mr. TIEMANN. Yes, I would have to agree that the State should retain this right. I would be practicing some duplicity if I varied from that. That not only applies to length but other segments of regulation as far as the Federal Highway Bureau of Motor Carrier Safety is concerned.

Mr. SHOUP. Forgive my concern, but we have a crunch now. Can you give us any time that we can have a feed-in from you as to legislation necessary to accomplish what you are seeking.

Mr. TIEMANN. I would say the Secretary will decide on the proposal on rates rather quickly. I think on the 20th and 21st Senator Bentsen's committee convenes for weight hearings, and we will be testifying at that time, so I am sure prior to that time the proposal would have come forward from DOT.

Mr. SHOUP. Thank you, Governor.

No further questions, Mr. Chairman.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

Good morning, Governor.

Mr. TIEMANN. Good morning.

Mr. ADAMS. I am more interested in the specifics of the problem of fuel. You gave four points you had moved on, and you said you had an investigation to determine whether supply is matching allocation. I would like to ask you the results of that and, in particular, whether it is not true that the problem with spot supply on truck stops is that independent truck stop petroleum stations generally had favorable contracts when there was a time of an abundance of supply of petroleum.

These all have a force majeure clause and they have all been knocked out, either the independent is gone or his allocation is cut back, so he doesn't have fuel to supply the trucker as he comes in. I know something about this business, both the truckers and the gasoline business, and I would like to know the results of your investigation on that point.

Mr. PIERSON. Mr. Congressman, the problem of fuel availability was examined by the Department based on allegations by the independent truckers that there was no fuel available on one side of the highway and it seemed to be available on the other.

Our inquiry into that indicated that the two-tier pricing system in which the major oil companies' price is stabilized, while the independents may purchase import oil and pass on any reasonable profit, has resulted in a disparity in the prices and has resulted in a disparity somewhat in the supply, the reason being that the major trucking companies use the interstate system almost exclusively and one would suspect that those service stations would run out of fuel first.

On the other hand, service stations off the interstate system would not have the same demands and in many cases would have readily available fuel. This matter was discussed with the Federal Energy Office and they will be looking at it in terms of their distribution patterns.

Mr. ADAMS. I understand that but my question is, how many stations either went out of business or had their allocation of fuel severely curtailed which were shown by your investigation?

In other words, how many did you look at and how many were in trouble? That is why we passed the Emergency Fuel Allocation Act which, in effect, said it was put in to protect the independents so that the major company could not just simply supply its own outlets or the ones that it happened to have a contract with that it liked and leave the independents on the spot market, when there was no spot market?

Mr. PIERSON. The response is that we did not and do not have any hard data in the Department of Transportation on the number of businesses that have closed. On the other hand, we are informed by the Federal Energy Office that there is a difference between allocations and supply and the allocations—

Mr. ADAMS. That is what I want to know. You are telling me words.

I would like to know what actually the situation is. You have just said to me, "Yes, there is." Now, what is it?

Mr. PIERSON. The Department of Transportation is not the agency that has that data. That is the Federal Energy Office.

Mr. ADAMS. Won't they give it to you?

Mr. TIEMANN. We haven't made inquiry for it.

Mr. ADAMS. This is our problem. We have an energy bill on the floor now that comes out of this committee and we are trying to be certain the right hand is talking to the left hand and dealing with the specific problem that we knew we had. That is why we passed the bill. I am not trying to be critical, I have been in the executive branch and I know there are a lot of people in a lot of different agencies. But what we are getting at is there is a statute that says there is to be in effect an allocation among all and, Governor, you testified you investigated.

Now what I am asking you is, what does the investigation show in terms of hard figures so that we know whether or not our bill worked?

Mr. TIEMANN. Mr. Adams, my comment on the four areas, including the one to which you allude, identify that as specific administration action, which would include the activities of FEO and IRS. We do not have figures showing, as Mr. Pierson indicated, how many stations failed or are in jeopardy. FEO or IRS has that, we will be glad to get it and submit it to you.

Mr. ADAMS. We committee members often ask for something to be submitted. I am not really interested in the information so that I know something more about something I don't know about. What I am trying to find out from you is that that bill said we are trying to allocate, in this case, diesel fuel used by the trucking operation throughout the country so that a vital service, transportation of materials, continues. This is sort of in your area because you are the planning and policy agency in transportation.

Now we just had the ICC in, and I tried to do pretty much the same thing with Mr. Stafford. I am not satisfied yet. I would like to know what you as the policy and planning agency see out there in the country as a result of your investigation as to the allocation of fuel to these places and, second, then what you are doing about it.

Are you telling the FEO that, for example, there are 45 stations in the State of Ohio that are down 5 percent and, therefore, you are sending out a bulletin to truckers saying, "You better not stop there, it isn't there any more"? I am trying to get just what is happening.

Mr. PIERSON. Mr. Congressman, the system is one in which there is an admitted shortfall, therefore it's the distribution of an inadequate supply.

The FEO has established an allocation program. They have set up a procedure where in hardship cases and where they have run out of fuel they may make application to those State agencies for relief.

The procedure, the program, the system is run by FEO and they keep us advised in generalities and we do not require or ask of them, you know, precise or hard figures.

As planners or policymakers we need to know if there is a shortfall and how serious it is generically but we are not recipients of all the data they are collecting about precise figures.

Mr. ADAMS. Is it working?

Mr. PIERSON. Is the allocation system working?

Mr. ADAMS. Yes.

Mr. PIERSON. It's a little premature to assess that. It's only been in effect for a matter of about 3 weeks.

Mr. ADAMS. You have indicated a great many people have called upon you. I get a certain number of calls, too, and we in the committee are placed in the position of relying on what is happening in this system that we created by law and you now have regulations and are administering—I think that is why we are all here this morning.

Is this thing working? If it isn't, do we have a responsibility to change some law or is it bugs in administration or is it just that it can't possibly work because there isn't enough to go around?

We need to respond. I want to do the same thing you want to do. I want to tell the man sitting there what the truth is. That is why I am asking you to tell me, is it working or do we just not know? If we don't know, how many hours, days—I don't want to even say weeks—before we can tell people whether it is working or not or whether the Government has a responsibility to respond in a different fashion?

Mr. TIEMANN. I guess I can only respond in a general fashion. It is premature for us to make a judgment but we think it is working, generally speaking. Specifically, as I indicated to you and Mr. Pierson indicated, there are some problems. I suspect those could be worked out, the mechanism to work them out is there.

Mr. ADAMS. You think it is. You think we have enough legislation on allocation, the machinery is in place so we are not going to be faced with a number of independent owner-operators who, if the summer gets into a crunch, will be saying, "Well, I can only get 50 gallons of diesel and that will only take me this far. By God, I will just park the rig."

Mr. TIEMANN. You could pass legislation until it all freezes over. We think there will be some admitted—as Mr. Pierson points out there is—a shortfall problem and by spring or summer it may be worse but I don't think legislative change will aid that.

Mr. ADAMS. Do you think you have the power to make the petroleum industry allocate out through the system?

Mr. TIEMANN. I think the legislation presently—I surely don't want to speak for FEO at all—but it seemed to me the legislation presently enacted is a workable method.

Mr. ADAMS. My last question to you is, If we end up with an even greater shortfall, in other words we are down say 15 or 20 percent, what do you recommend we do with regard to the people that obviously are not going to be able to do what they have been doing?

Are you going to put out a general bulletin to the independent owner-operators and say, "You have to do something different," or "You can only go on these routes," or "You better just put it up on blocks"? In other words, do you have a recommendation to us?

I may not get a chance to see you again until the summer, or for that matter I don't know again when and we need to know, if we are going to sit around and try to draw up legislation or respond to this, whether you have a policy in mind of what to do if it gets worse.

Mr. TIEMANN. I can't respond to that meaningfully. I think the line of questioning, as I would understand it—and I would ask my colleagues to make comments if they would like—is that you probably should be talking to Mr. Simon for response to that type of question.

Mr. ADAMS. No, I understand the oil. We will get to Mr. Simon. He has been here before and he will be here again but I know what he is going to say which is, "Well, we are so much short."

The question I am asking you, you are the planning policy group for a group of people driving trucks out there and they as an industry, the truck drivers need to have, I think, some direction or indication from the Federal Government of what they are expected to do if this shortfall comes to pass.

Mr. TIEMANN. The only thing I could say, as soon as we know what to tell them meaningfully, we will tell them. Today I can't answer it. We can't recommend anything to them today.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Governor, it would be helpful to this subcommittee and full committee if, as the facts develop and you are in more of a position to analyze how the allocation program is working out, if you could keep us advised on exactly what your own conclusions are.

Mr. TIEMANN. We will be glad to do that, Mr. Chairman.

Mr. JARMAN. The chairman of our full committee, Mr. Staggers, is with us at this hearing and the Chair would like to recognize him for any comment he has on this subject.

Chairman STAGGERS. Thank you, Mr. Chairman.

I want to thank you, Governor, for coming and giving us the benefit of your views.

I want to thank the committee because the Congress is very much interested in this situation. It is getting to be an intolerable situation. After having heard their views and problems, I don't blame some of these independent truckers for being upset. In a land as free as ours is, it is an intolerable situation in that it looks as though they are being cut off from exercising their freedom. As my colleague, Mr. Adams would say, they have been cut off at the pass and they can't get through.

The reason the subcommittee is having this hearing is to try to be helpful to the truckers and try to get some information which will help us as Congressmen to help solve the problem and maybe with your help, Mr. Stafford and Mr. Simon, maybe there is something we can all do, by working together toward a common end.

I think after you have heard so many of these pathetic stories, that you agree something must be done. If it is the Congress that needs to do it, we want to do it.

If it is somebody downtown that isn't doing their job, we want them to do it because we think it is a situation that has gotten bad, could get worse and we just don't want it to continue.

So I again want to thank you and your associates and I want to thank the subcommittee, too, because this is a rather extraordinary duty they are doing here, but they thought it worthwhile for the Nation to have it done.

Thank you, Mr. Chairman.

Mr. JARMAN. Thank you.

Are there additional questions?

Mr. SHOUR. Yes, I have a question.

Governor, to clarify the answer that you gave me and then you seemed to change somewhat in responding to Mr. Adams' question.

I understand that you said you were preparing legislation and recommendations which would increase the efficiency, the utilization of truck transportation, which would seem to me to be an answer to Mr. Adams' question of what are you planning to do if there is more of a shortfall. In other words, decrease the demands.

Am I correct that you are going to have recommendations to us such as weight, cube, feet, such as it may be?

Mr. TIEMANN. Yes, the legislation we are presently studying and will be proposing to Mr. Brinegar has to do with weights.

Mr. SHOUP. And ultimately the idea of that is not just to increase weights but is to actually decrease the demands per pound of freight carried of energy, is that correct?

Mr. TIEMANN. This would be a meaningful step not only toward the more efficient use of fuel but the increase of profitability for the owner-operators.

Now it comes down to a matter of economics, the owner-operator is simply going broke and we think this is one way—

Mr. SHOUP. Then you are doing something along this line?

Mr. TIEMANN. Yes, as I have indicated.

Mr. SHOUP. Thank you.

No further questions, Mr. Chairman.

Mr. JARMAN. Gentlemen, we appreciate very much your being with us to analyze this problem.

Mr. TIEMANN. Be assured of our complete cooperation in furnishing any material or any changes at DOT or that we have as things change with regard to the problem we are talking about today we would be delighted to respond any way we could.

Mr. JARMAN. I think we are going to need, as Mr. Shoup indicated, as much in specifics as to what the problem is and how the allocation system is working to meet that problem.

As Chairman Staggers says, any indication to us from your own perspective of anything the Congress needs to do to help in playing a part in this will be appreciated.

Thank you very much.

This concludes the hearing of the subcommittee this morning. The committee will stand adjourned.

[Whereupon, at 11:35 a.m., the subcommittee adjourned.]

INDEPENDENT TRUCKERS AND THE ENERGY CRISIS

WEDNESDAY, FEBRUARY 6, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2125, Rayburn House Office Building, Hon. Harley O. Staggers, chairman, presiding.

The CHAIRMAN. The committee will come to order.

We will get started now because some of us have another meeting this morning and will have to leave.

We have before us this morning a resolution sent here by the Department of Transportation, asking us to take some action on it.

This matter will be given more consideration than was given in the Senate.

I see that the Senate passed the resolution Tuesday, February 5, after the Senate Commerce Committee met and passed the resolution in special session Tuesday morning. We have some members of this committee who feel this resolution ought to be given a little more consideration.

We have in the audience representatives of the ICC and representatives of the DOT.

Let me just preface my remarks by saying that most of us know we have a serious situation in America and regardless of whose fault it is—and there is plenty of fault to go around—that there have been several incidents of violence in this country and they are increasing. In my university town they are planning on closing down the university, I believe, tomorrow. They do not have food; they do not have other things that are needed at the university. The mayor said they are in dire circumstances now in many ways: Food stuffs and other things. The city has been surrounded and no one gets in or out by trucks.

Now, I don't know how many towns have similar situations. I hate to act at gunpoint for anyone to do something, it doesn't matter what it is. I thought that it might be wise for this committee, in their wisdom, to pass this resolution and to issue on the floor some statement that this is probably the last time this committee will do something like this under any consideration of an emergency with a gun at our heads because, as one member has said—Mr. Moss of California—that anything we do passes right on to the housewife of this Nation. And, heaven knows the prices that she is paying now have gone through the roof.

But I am just thinking of the alternatives and I think that it does behoove the committee to make some kind of movement and

then to try to correct it some time, if it needs to be, and perhaps set a date limit on this so that there could be other legislation if need be, and that we just don't act for all time here in haste. We will put a time limit on it.

[The text of H.J. Res. 893 follows:]

[H.J. RES. 893, 93d Cong., 2d Sess.]

JOINT RESOLUTION To provide for advancing the effective date of the final order of the Interstate Commerce Commission in Docket No. MC 43 (Sub-No. 2)

Whereas the Interstate Commerce Commission, through its proposed order issued January 30, 1974, in Docket No. MC 43 (Sub-No. 2), seeks to alleviate a serious and pressing transportation problem by requiring carriers to reimburse their owner-operators for all increases in the price of fuel over the base period May 15, 1973; and

Whereas section 221 (b) of the Interstate Commerce Act, 49 U.S.C. 321 (b) appears to preclude the Commission from making its final order in MC 43 (Sub-No. 2) effective in less than thirty days; and

Whereas the inability to effectuate the final order in MC 43 (Sub-No. 2) more promptly will cause substantial hardship to a significant portion of the motor carrier industry and the shipping public; and

Whereas there exists a national transportation crisis which presents a grave risk to the commerce and well-being of the Nation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commission shall issue a final order in MC 43 (Sub-No. 2) as soon as possible which shall become effective not later than February 15, 1974.

The CHAIRMAN. I will call on the gentleman from California first. He had asked for permission to speak.

Mr. Moss. Mr. Chairman, I in no way minimize the seriousness of the problem facing this Nation in truck transportation, but I am informed that we have approximately 19 percent of truck transportation that is regulated by the Interstate Commerce Commission.

Much of the problem we are dealing with arises from independent operations from privately controlled, company controlled operations, from the so-called tramp or gypsy hauler and, of course, from much of the backhauling.

It is my understanding that the primary complaints are the escalation of costs of fuel oil and, in some instances, the difficulty of obtaining it.

If we are dealing here by this resolution with only those immediately subject to regulation by the Interstate Commerce Commission, it is my judgment that it goes but a short way toward meeting the entire problem.

I think we have a responsibility of knowing the full scope of the problem, of having a far more comprehensive understanding of what might be required.

I sense that some sort of rollback in prices, not freezing at the levels of yesterday, which are probably the highest levels, is what is required.

I noted that, while we are working on an energy bill in Congress, that Exxon and Gulf acted to show their deep concern for the growing economic problems by increasing the price of gasoline by, I believe, five and a half and two and a half cents on the part of the two companies.

I also noted, to the credit of American Oil, that it decreased by 2 cents on gasoline and 1 cent on fuel oil.

So, we seem to have a mixed bag of facts and figures that are going to be relied upon and I submit that a summary enactment of this resolution, which has only the effect of passing through, in a manner as yet undefined, increased costs for fuel to override the Interstate Commerce Commission, at least in respect to this aspect of the regulation of that minority of the industry regulated by them.

I don't know what effect it would have but I do know that there is a serious squeeze on the purse of the average individual customer in this Nation and I think we have to have some measure of concern over that, so it requires that, while we make haste, we should in the process at least know exactly what we are doing.

The CHAIRMAN. I thank the gentleman.

The gentleman from Tennessee, very briefly, because we are going to start the hearing.

Mr. KUYKENDALL. Mr. Chairman, I agree with the suggestion that the body of this bill is not the place for us to make any strong statements on the subject of violence. May I ask an opinion here?

The CHAIRMAN. Yes.

Mr. KUYKENDALL. We have available to us, as the U.S. Government, in interstate commerce, quite a few different statutes. I have six here in front of me that are perfectly applicable to these cases.

My question to you is this, sir: Would it slow down this legislation in any way if we respectfully urge the Justice Department to begin immediate enforcement of 18 U.S.C. 33 or 15 U.S.C. 31.

Wouldn't we have more effect if we put it in the report?

The CHAIRMAN. Yes; and show that those statutes are not being enforced. It is their duty to do it and, if they were, these things would not be happening right now.

Mr. DINGELL. Is the Chairman referring to the Hobbs Act and different Federal statutes relating to criminal prosecution of those engaged in violence and obstruction in connection with shipments in interstate commerce?

Mr. KUYKENDALL. That is 15 U.S.C. 31. I believe that is the Hobbs Act.

Mr. DINGELL. I would certainly accord with that, Mr. Chairman.

The CHAIRMAN. The Chairman of the ICC and those with him, if he would come forward. I see he has Commissioner, Mrs. Brown, from my State of West Virginia, and his counsel with him.

I would like for you to come forward, Mr. Stafford, and whoever else you have with you. I think, under the circumstances, you are going to have to explain to this committee what this resolution will do and the need for it.

Now, I understand that this takes care of the unregulated carriers by forcing the regulated carriers to pass through to them whatever fuel increases accrue to the unregulated carriers. Now, I think that is the real import of the bill.

Is this not true?

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY MRS. VIRGINIA MAE BROWN, COMMISSIONER; FRITZ R. KAHN, GENERAL COUNSEL; AND EDWARD J. SCHACK, ASSOCIATE DIRECTOR, OFFICE OF PROCEEDINGS

Mr. STAFFORD. Yes. This passes through to the owner-operators.

The CHAIRMAN. The owner-operator and the unregulated carrier pays for the fuel increase now without any reimbursement.

Mr. STAFFORD. A number of the regular route carriers also have some owner-operator operations.

The CHAIRMAN. That is right.

Now, I would say this to the gentleman: There are three members of this committee who must leave here shortly to work on the energy conference bill. We will leave this hearing under the able direction of the gentleman from Michigan, Mr. Dingell, the ranking member here, and I am sure he can conduct the hearing, and we hope to get a bill out today.

With that, I would like you to go ahead on the resolution, if you would, and present your views.

Would you introduce the others with you, for the record?

Mr. STAFFORD. I have with me Commissioner Brown, who is Chairman of our Division 2, which is our Rates and Tariff Division; and then I have our General Counsel, Fritz Kahn; and our Associate Director of the Office of Proceedings, Ed Schack, who has been working in the area very closely for quite some time now.

Mrs. Brown, of course, being chairman of the proper division, started work on the whole matter sometime before the deluge of problems started hitting us. In other words, before these various, avowed leaders of various trucking groups arrived we had the first step come out, which was our 10-day rule, which Mrs. Brown put through. We found that though many of the companies were filing for these rate increases, for a pass-through rate increase, many were not.

It was with that in mind, then, that we came forward with this present proposal that your action today would speed up. It would have no effect whatever on the substance of the action we took or didn't take. It would merely speed up any order that would be put out by the Commission.

The CHAIRMAN. But it has no bearing on your consideration?

Mr. STAFFORD. Upon our consideration?

The CHAIRMAN. That is right.

I want to yield to Mr. Macdonald.

Mr. MACDONALD. I am jumping the gun a little bit, but I have to leave soon. I thought you said some of the regulated carriers would be affected?

Mr. STAFFORD. That is right.

Mr. MACDONALD. How much of that 18 percent currently would be affected by the resolution?

Mr. STAFFORD. I don't know. I talked to the regular route trucking people just this last week at their conference meeting, and I had quite a number of them come to me and say, "Well, I have a steel-

hauling operation tied into my regular operation; so I do have some owner-operators." I would guess the percentage was minimal, though. You would have to talk to the American Trucking Associations on this.

Mr. MACDONALD. Mrs. Brown?

Mrs. BROWN. I would have to concur with what the Chairman said, but I would think it would be minimal.

Mr. MACDONALD. Minimal?

Mrs. BROWN. Yes, I would think so.

Mr. MACDONALD. Thank you.

The CHAIRMAN. Congressman Moss, do you have a question before we leave?

Mr. MOSS. Mr. Chairman, I have many, many questions, but I would prefer to wait until I have a few more answers before making or attempting to develop those questions for the record.

What I really want is to elicit information, and I think that Mr. Macdonald has just illustrated the fact that we do not have information because his question, in neither instance of the two very distinguished Commissioners was answered in a manner that gave him definitive material upon which to base a legislative judgment. I don't blame them for that, but I am just saying that I never like to move ahead of my facts.

Mr. STAFFORD. The regular-route carriers generally own their own trucks. The irregular-route carriers largely operate with owner-operators, and then, of course, you have the others—

Mr. MOSS. How many of those will be subject to your rate regulation for passthrough purposes?

Mr. STAFFORD. Probably 75 percent of them.

Mr. MOSS. All right; 75 percent of what?

Mr. STAFFORD. Of the irregular routes.

Mr. MOSS. That is what percentage of the total?

Mr. STAFFORD. Of the total number of trucks?

Mr. MOSS. Yes.

Mr. STAFFORD. I don't know how many trucks.

Mr. MOSS. In other words, what is the size of the slice of this pie that we are going to be dealing with?

Mr. STAFFORD. Well, we had a filing under this special procedure a short time ago by the Rocky Mountain Rate Bureau of seven-tenths of 1 percent for a passthrough. This amounted to something in the neighborhood of \$9 million.

Mr. MOSS. Now you are talking about the passthrough, which, if enacted upon rates would be an increase of seven-tenths of 1 percent?

Mr. STAFFORD. In this area, on what their costs were at that time. They are now filing—energy surcharges—they are now filing—

Mr. MOSS. On what date was that?

Mrs. BROWN. The Rocky Mountain tariff, which the Chairman mentioned, was actually granted in January.

The special procedure that we have out is that energy surcharges only can be increased once a month, asked to be increased once a month. Now we have had a range of filings from all the motor carrier tariff bureaus from, say, 0.7 to 9 percent. I am talking about what they ask for.

Mr. MOSS. In other words, the passthrough could theoretically,

depending upon the accounting assumptions underlying the request, range from seven-tenths of 1 percent to 9 percent in the increase in rates?

Mrs. BROWN. Mr. Chairman, I might say to you it sounds very much as if the passthrough had no substantiating evidence supporting it, which is not true at all.

Mr. MOSS. No; I would not want—

Mrs. BROWN. Substantiating evidence is required.

Mr. MOSS [continuing]. To convey that impression.

I said depending upon the accounting principles underlying the request, the range was from seven-tenths of 1 percent to 9 percent in the Rocky Mountain Region?

Mrs. BROWN. No; I was not confining my remarks just to Rocky Mountain now. I spoke of all cases filed under this special procedure. Rocky Mountain has been consistently about the same.

Mr. MOSS. Now, under the—

Mr. STAFFORD. Rocky Mountain filed for seven-tenths of 1 percent last month.

Mr. MOSS. They filed for seven-tenths of 1 percent?

Mr. STAFFORD. Right.

Mr. MOSS. Do we have anything to indicate the percentage increase in a rate as a result, say, of a 2- or 3- or a 5-cent per gallon increase in the cost of fuel oil, diesel fuel oil?

I am trying to determine whether we have any kind of a reference here, a statistical reference, so that we could have an idea of projections in the future for the range of increase.

Mrs. BROWN. The Motor Tariff Carrier Bureaus which file the application under the energy procedure as set forth appear to indicate somewhere around 1 percent.

Mr. MOSS. What happened in the case of the 9 percent, then?

Mrs. BROWN. Well, I said that was the top range. The 9 percent. We have the power of suspension—I don't think the 9 percent filing was suspended, but that was one very slight area which had substantiating evidence with it. Applicant had not had any increase for energy for a longer period of time. Actually, some of them had an energy increase a month or two before. So, it depended on the length of time involved there. Now, most of them are up now to a certain point.

Mr. MOSS. What has been the range of increase in fuel oil costs during the period from January 1 until February 6, or yesterday, we will take it? Do you have any idea?

Mrs. BROWN. The steel haulers is 4 percent, and they do range downward from there.

Mr. MOSS. That is the increase in fuel costs?

Mrs. BROWN. Right.

The CHAIRMAN. There are four of us that are leaving and I would say that we are under the 5-minute rule. Anyone who wants to talk will be under the 5-minute rule because I hope that we can complete the discussion here today and perhaps get the bill out, if possible.

I think, by questioning, the committee can get the information they need.

If you have a statement, to make, Mr. Stafford, I would like you to make it. Do you have a statement?

Mr. STAFFORD. I don't have a prepared statement.

The CHAIRMAN. At this time, Mr. Dingell, the rest of us will leave.

Mr. DINGELL [presiding]. I want to ask this question and then I will recognize the gentleman from Tennessee.

Have you completed your statement to the committee?

Mr. STAFFORD. Yes.

Mr. DINGELL. The Chair then is going to recognize members in order of seniority and, as indicated, the Chair must apply vigorously the 5-minute rule, with appropriate apologies to members of the committee.

The Chair recognizes Mr. Nelsen.

Mr. NELSEN. No questions.

Mr. DINGELL. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Chairman, people often have the idea that a short bill is a simple bill. This bill is anything but simple.

For the record: The nonregulated subcontractor of a regulated carrier presents a large part of this problem; is that correct?

Mr. STAFFORD. That is right.

Mr. KUYKENDALL. Now, of the so-called independent, meaning the nonregulated carrier, what part of this tonnage is subcontract work done by a nonregulated subcontractor of a regulated carrier?

Mr. KAHN. Congressman, I believe there are no reliable data available. I think the problem that we face is complicated since the use of what we term purchased transportation, transportation that the regulated carriers obtain from the owner-operators rather than employees driving for them, varies with the commodities.

In the case of general commodities, the purchased transportation may be very small, in the vicinity of 5 percent. But when we get into the areas such as iron and steel, it approaches 30 percent. When we get into household goods and other commodities, it may be as high as 50 percent. That is why we believe, in addressing this problem, the owner-operators take on larger importance than their numbers.

Mr. KUYKENDALL. Is it not true that the owner-operator generally operates on a percentage of the total revenue?

Mr. STAFFORD. Yes; generally the contract is something in the neighborhood of 70 or 75 percent.

Mr. KUYKENDALL. So, the owner-operator, as compared to the original contractor, has absolutely no flexibility. Any adjustment must be made first as a request by the contractor and then passed on; is that correct?

Mr. STAFFORD. That is right.

Mr. KUYKENDALL. For instance, if they are operating on 75 percent for the independent and 25 percent for the original contractor, the independent must absorb all costs out of his 75 percent. He has no way to get a revenue increase?

Mr. STAFFORD. That is right.

Mr. KUYKENDALL. In January this year you authorized the regulated carrier to make the passthrough. Why, in your opinion, were not more of these passthroughs applied for and made to the independent dealer?

Mr. STAFFORD. Well, I have listened to a lot of them, a lot of the management types have talked to me in the last week or 10 days, as with Mrs. Brown, and they give various reasons.

Mr. KUYKENDALL. Any of them good?

Mr. STAFFORD. Yes; some of them feel that they did not want to file for a rate increase on this passthrough on the theory that perhaps their competitor was not going to file for it and, hence, would have an advantage.

Mr. KUYKENDALL. Oh, another one of those.

Mr. STAFFORD. That seemed to be one of them. Do you recall the others, Mrs. BROWN?

Mrs. BROWN. Yes; Mr. Chairman, some had applied for general rate increases, say a month before, or had some pending that already had energy costs reflected in them. Then this was a special energy procedure, and they were actually caught at the point that the order was providing relief obtained by them in the last general rate increase, thereby creating the problem.

Mr. KUYKENDALL. Now, Mr. Stafford, would you agree that this act in its primary function would mandate the regulation that you authorized in January?

Mr. STAFFORD. No question; this is merely a proposal; this is a rulemaking procedure.

Mr. KUYKENDALL. Would this bill mandate it?

Mr. STAFFORD. If the Commission votes to approve the order in the rulemaking procedure we now have before us, then under our law we would have to wait 30 days before it could become effective.

Mr. KUYKENDALL. That is right.

Mr. STAFFORD. With this act, you are cutting it down to 1 day's notice once we make a decision as to whether we are going to actually go ahead and put that order into effect or not.

Mr. DINGELL. The time of the gentleman from Tennessee has expired. The Chair will recognize my friend again as we come around.

The Chair will observe that the same time limit will be imposed on the Chair as it is on other members of the committee.

Mr. Chairman, I am troubled. Mr. Moss went into the question with you of the number of carriers covered under this legislation. Obviously, you have within your jurisdiction a given number of carriers.

First of all, does the order that would be expedited by the legislation before us cover all motor carriers under regulation by the ICC?

Mr. STAFFORD. That is right.

Mr. DINGELL. That covers, then, all interstate carriers; is that right?

Mr. STAFFORD. Right.

Mr. DINGELL. It also would affect those private citizens who happen to have a lease or other contract agreements with regulated carriers?

Mr. STAFFORD. Yes.

Mr. DINGELL. Now, there are large classes of carriers who are not subject to ICC regulations; is that right?

Mr. STAFFORD. Right.

Mr. DINGELL. Now, if you please, what are those classes of carriers?

Mr. STAFFORD. These are the private carriers, carriers carrying agricultural products, cattle carriers, people like this.

Mr. DINGELL. It also would not cover intrastate carriers; they would not be afforded relief?

Mr. STAFFORD. That is right.

Mr. DINGELL. Nor would it cover any person who might happen to lease or rent or have some kind of contract for use of equipment by the kind of carriers that you have just listed; is that correct?

Mr. KAHN. This would still be exempt transportation.

Mr. DINGELL. These are still exempt transportation, so would not be covered.

Now, that leaves us in a position where the order that would be expedited by the legislation before us only covers a small percentage of the carriers in this country; is that right?

Mr. KAHN. In terms of the numbers or enterprises; but in terms of the ton-mileage of freight affected, it would be, if not half, just around one-half of all the ton-miles of motor carrier freight of this country.

Mr. DINGELL. Just around half would be helped by the legislation before us, or would not be helped?

Mr. KAHN. Would be affected by the order that the Commission would promulgate.

Mr. DINGELL. Does the completely independent group now have a passthrough?

Mr. KAHN. The completely independent group can price as it sees fit, free of any interference by this agency, certainly.

Mr. DINGELL. Would you give us for the record a statement of the approximate numbers of carriers and the approximate amount of ton-miles of those in the different categories that we have indicated already in giving us your best knowledge.

Mr. STAFFORD. Can we supply that for the record?

Mr. DINGELL. I said for the record, Mr. Chairman. That would be quite acceptable.

[The information requested appears in the response to Mr. Rooney's question at p. 39.]

Mr. DINGELL. Now you have certain responsibilities in this business of highway safety and so forth. Who is it that is provoking the violence?

Mr. STAFFORD. None.

Mr. DINGELL. You have certain responsibilities to inquire into the well-being of the industry under your keeping?

Mr. STAFFORD. Right.

Mr. DINGELL. Will you inform us who is doing the shooting and violence and who is engaged in this strike? Does anybody know?

Mr. STAFFORD. Not at the Interstate Commerce Commission. We have no police authority.

Mr. DINGELL. What about the Department of Justice? Have you had conversations with Justice to see who would be helped by this or who is on strike? I am not sure under the legislation before us we would be helping the people who have a grievance or feel they have a grievance.

Mr. STAFFORD. All this legislation would do is speed up any action we take in this case, Ex parte No. MC-43 (Sub-No. 2), that we have under consideration.

Mr. DINGELL. Has your rulemaking gone into effect? Has it been completed?

Mr. STAFFORD. No.

Mr. DINGELL. Has it been completed?

Mr. STAFFORD. The Senate yesterday put the 15th of February as the effective date. I circulated a request for permission to move our date for comments to February 13 in case this went through, so that we would vote by the 14th to know whether we were going to actually put this particular action into effect.

Mr. DINGELL. You have not actually completed your actions then at the ICC that would be expedited by the legislation before us?

Mr. STAFFORD. We are still asking for the views, as we must do under rulemaking procedures.

Mr. DINGELL. The Chair notes that my time has expired.

The Chair recognizes Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. Stafford, in the parlance of labor regulations, would you describe this highway shutdown as a purely wild-cat operation? Is it organized by any trade union or labor organization?

Mr. STAFFORD. I understand it is not. The Teamsters organization has loudly denounced this action. I am sure it is not the organized Teamsters that have any part in this.

Mr. VAN DEERLIN. What would be the effect on commerce if those who were refusing to drive were to park their trucks and not try to stop others in the deliveries that they have undertaken to make?

Mr. STAFFORD. The effect would not be as disastrous as if they were out stopping the traffic, but the needs of the country are such that we need all the trucks moving that we can move in this country.

Mr. VAN DEERLIN. Clearly.

How would you describe this share? Is it 20 percent, 30 percent, or all truck carriers?

Mr. STAFFORD. It depends on how many are actually going to park their trucks in the backyard. You see, again, as our general counsel said, somewhere in the neighborhood of 40 percent of the owners are private carriers that do not come under our jurisdiction in any way. They can file or they can work out their own rate, whatever they want, with their shipper. It is possible they might continue to operate. But, many of them are not going now. Most of them are not carrying freight.

Mr. VAN DEERLIN. Most of them are——

Mr. STAFFORD. Are not operating at this time.

Mr. VAN DEERLIN. And by choice.

Mr. STAFFORD. Most of them are really afraid, I think, or at least this is the reason that many give.

Mr. VAN DEERLIN. Compulsion, rather than choice.

Mr. STAFFORD. I think this is basically true; yes, sir.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair recognizes Mr. Nelsen.

Mr. NELSEN. Just one question. I met some people from out in my neighborhood from Stewart, Minn., a little town of maybe 500 or 600 people, and right in that little town there is a difference of 9 cents per gallon on identical fuel.

I asked the question—I had the opinion that somebody was jacking up the price, and they said that that is by virtue of regulation and formulas set up. Now, is this a true statement?

Mr. STAFFORD. Of course, that has no bearing on our regulation.

Mr. NELSEN. I see.

Mr. STAFFORD. I have some question about whether it has anything to do with Government regulation, but I don't know the facts in the case at all, sir.

Mr. NELSEN. Thank you. No other questions at the moment.

Mr. DINGELL. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Stafford, do you and the Commission recommend the resolution before us?

Mr. STAFFORD. I would say yes, because yesterday the Commission voted to speed up the action on the procedure that this will effect and so, in a sense, the Commission has approved it but not by a formal vote.

Mr. PICKLE. And not with respect to the date certain but with the recommendation?

Mr. STAFFORD. Yes, sir.

Mr. PICKLE. Now, it is obvious that there is an inequity with respect to the owner-operators, and some relief must be given. You feel that this is a proper step.

Mr. STAFFORD. That is right. One of the things we have found that they are having to pay rapidly escalating prices for their fuel, and that just does not fit within their 70 or 80 percent contract.

Mr. PICKLE. You recognize this will not cover the certificated carriers or all the carriers; it will bring relief to that one segment being hurt at this particular time. But we have a national crisis and we need to take action.

Mr. STAFFORD. Yes.

Mr. PICKLE. I think we have to recognize that we have to give immediate help to this group.

Now, what happens to the possibility of an inequity that might be placed on the regulated carriers? Will they be able to get similar relief? Is there some other thing we need to do to see that the equities are balanced?

Mrs. BROWN. Mr. Congressman, they certainly will. We continue to have all of the avenues for rate procedures in regard to the carrier incurring expenses as far as, say, tires, labor, social security, increased cost; and this procedure in regard to energy costs is a separate procedure. The carriers can go into this on an expedited basis, the 10 days procedure, because we recognize a type of emergency exists.

Mr. PICKLE. Could you tell me, or the members of the committee, how your so-called surcharge rate works now and is that an avenue to pursue in the immediate days ahead?

Mrs. BROWN. Mr. Congressman, we use the surcharge rather than the general rate increases for energy costs. It separates out that element and makes it easier to deal with energy costs. The shippers have come in, say, for instance, the steel matter of last Friday. All of the steel industry came in and supported a surcharge of 4 percent for the steel carriers on energy costs, and they would not support, say, a 4 percent on top of a 6 percent just granted on a general rate increase, going into the rate base.

So, there is a difference, and the shipping public as well as the carriers seem to think the surcharge is a feasible way to address the problem.

Mr. PICKLE. Would that be a good way to have a through-pass if it could be properly worded and agreed to?

Mrs. BROWN. It appears to be.

Mr. PICKLE. Well, then, the problem we have now is something that is needed immediately, and we should waste no time in granting it, should we?

Mrs. BROWN. The Commission felt that this was needed, that it would be helpful. It is a step, and, we think, a step in the right direction.

Mr. PICKLE. I thank you, Mr. Chairman.

Mr. DINGELL. Mr. Ware.

Mr. WARE. Thank you, Mr. Chairman.

Four brief questions, and I don't know whether there is any pattern so that you respond to these but I am curious to know whether or not the contractor or the owner-operator bears the insurance costs of insuring the merchandise, or who does?

Mr. STAFFORD. Mrs. Brown said it depends on the contracts. It really does. I talked with a number of carriers in the West just this last week who use owner-operators and many of them use a different form of contract under which they make these kinds of payments every day, or once a week, rather, to their drivers and don't have a solid contract like the steel haulers and like many in the Rocky Mount-east area.

Mr. WARE. In other words, there is no definite pattern?

Mr. STAFFORD. No.

Mr. WARE. What is the situation with respect to who carries the credit, the owner-operator or the contractor?

Mr. STAFFORD. Carries the credit?

Mr. WARE. Yes.

Mr. KAHN. Are you speaking, Mr. Congressman, of the charges that the shipper must pay?

Mr. WARE. Yes.

Mr. KAHN. The transportation charges are billed by the certified carrier.

Mr. WARE. Thank you. Who solicits the business, again the certified, certificated carrier?

Mr. STAFFORD. The regulated carrier.

Mr. WARE. Are you aware of any arrangements that may exist or do not exist between the contractor and the owner-operator as to a fuel supply?

Mr. STAFFORD. There are some who have managed to go out and buy, or two or three carriers have gone out and managed to buy fuel on a certain market and thus be able to supply part of their needs. There are all kinds of different operations going on but, basically no. The basic answer to that is no.

Mr. WARE. Thank you, Mr. Stafford.

I yield the balance of my time, Mr. Chairman.

Mr. DINGELL. Mr. Rooney.

Mr. ROONEY. Thank you, Mr. Chairman.

Mr. Chairman, you mentioned earlier that the Teamsters are opposed to the wildcat strikes happening in this country today. Tell me: Who do the Teamsters drive for? You have owner-operators, certificated carriers, and the Teamsters. Who do the Teamsters drive for? Are any of the owner-operators Teamsters?

Mr. STAFFORD. Yes.

Mr. ROONEY. I saw many of them at the Mayflower Hotel.

Mr. STAFFORD. May I answer that? I have some who contend they are Teamsters in name only, of these who are driving.

Mr. ROONEY. Who do the Teamsters drive for?

Mr. STAFFORD. I beg your pardon?

Mr. ROONEY. Who do the Teamsters drive for?

Mr. STAFFORD. They will drive for most truckers.

Mr. ROONEY. So, a Teamster can take the place of an independent trucker, also; is that correct?

Mr. STAFFORD. Yes; he can.

Mr. ROONEY. How many of the independent truckers are involved in the movement of freight in this country today, percentagewise?

Mr. STAFFORD. I don't have any figures on that. I would be happy to try to find some figures to fit into the other requests we have. I shall see if I can supply it to you for the record.

Mr. KUYKENDALL. Are you speaking of ton-miles or numbers of trucks?

Mr. STAFFORD. He is talking of numbers, I believe.

Mr. KUYKENDALL. Could we get both?

Mr. ROONEY. Yes.

[The following information was received for the record:]

RESPONSE TO QUESTIONS RE NUMBER OF INDEPENDENT TRUCKERS INVOLVED IN MOVEMENT OF FREIGHT

Mr. Kahn's estimate of ton miles cannot be broken down with greater precision due to a lack of data. Based on the 1972 Census of Transportation, it is known that there are 79,000 diesel-powered truck-tractors owned by some 76,500 persons. These vehicles are in intercity for-hire service and constitute the maximum number owned by persons owning from one to five diesel tractors each. Obviously, most of these persons own only one vehicle. This category of ownership most closely fits the meaning of "independent owner-operation."

Carrier reports to the Interstate Commerce Commission show that between 55,000 and 60,000 intercity power units of all types are leased *with drivers* to the regulated carriers annually. These power units account for approximately one-third of the total operated by the regulated carriers and one-third of their vehicle-miles produced. Unfortunately, these data are not broken down by type of lease (of which there are many variations) or by who owns them, as for examples, (1) other regulated carriers, or (2) independent owner-operators who primarily engage in the transportation of exempt commodities and occasionally in transportation of regulated commodities, the latter on a trip-lease basis. As a rough maximum estimate, however, it can be assumed that the bulk of the 55,000 to 60,000 power units leased with drivers are owned by independent owner-operators. Subtracting these units from the 79,000 total diesel tractors described above indicates that a minimum of 19,000 to 24,000 such units are owned by owner-operators providing service almost entirely for shippers of commodities exempt from I.C.C. regulation.

One other general indicator of the magnitude of exempt intercity truck transportation is available: According to *Transportation Facts & Trends*, published by the Transportation Association of America, the estimated 1971 freight charges accounted for by non-I.C.C. regulated trucks represented \$20.9 billion as compared to \$16.7 billion for regulated trucks. It is emphasized that independent owner-operators and regulated carriers both engage in both regulated and exempt haulage. It is therefore impossible to attribute a precise amount to the independent owner-operators.

Mr. ROONEY. You anticipate we will have a tremendous amount of requests for increased rates if this bill passes?

Mr. STAFFORD. Well, the purpose of this bill—one of the purposes of this bill—is to get the carriers to file for increases, and we were telling them that whether they file or not they have the responsibility for seeing that the payments are made for that added cost of the fuel incurred by these people.

Mr. ROONEY. Who would reimburse the certificated carriers?

Mr. STAFFORD. They file for the rate increase under the energy procedures that we have.

Mr. ROONEY. One final question: Do you think you have the staff to handle all these requests you are going to receive in the next few days after this bill becomes law?

Mr. STAFFORD. Oh, there will be some problems but we will handle it.

Mr. ROONEY. You are talking about a day for an increased rate but how long will it take for a certificated carrier from the time he files?

Mr. STAFFORD. It is a problem for the certificated carrier.

Mr. ROONEY. No further questions, Mr. Chairman.

Mr. DINGELL. Mr. McCollister.

Mr. MCCOLLISTER. I have a question and then I will yield to the gentleman from Tennessee, a member of the Energy Subcommittee. I am grateful for the proposal to expedite the decision of the ICC.

Now the question: I recognize that it is not a matter of jurisdiction for this committee, but I was wondering what the ICC's comment would be on the proposal to increase weight limitations by 5 percent, to use a number?

Mr. STAFFORD. The weight limitation?

Mr. MCCOLLISTER. Yes; weight limitation.

Mr. STAFFORD. The Commission, itself, has never taken a position on this in that it is outside its jurisdiction. But my position has always been, is now, that this is the time. If they are going to start to try to hold down the unit price of the commodities these truckers are carrying, then it is time we started loading these trucks up to the limit the highways are built to carry.

Mr. MCCOLLISTER. Does the ICC have information on the highway patterns and safety concerns for that?

Mr. STAFFORD. No; I do not. I believe the Federal Highway Administration * * *. But, it seems to me, if there were any of you members here the other day when I appeared, that the Federal Highway Administrator said at that time that they were working on such a proposal, which would indicate to me, at least, that they must feel that weight allowances are too little.

Mr. MCCOLLISTER. Thank you, Mr. Stafford.

I would like to yield to the gentleman from Tennessee, Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Chairman, I would like to echo the statement made by the gentleman from Nebraska, Mr. McCollister.

I have felt for several months now that the only satisfactory quid pro quo with the trucking industry that would not destroy the consumer is a maximum practical axle weight in order to make up for the decrease in fuel and to make up for lower speeds.

Mr. STAFFORD. That is right.

That is the point I was trying to make, that you at least hold down the unit price; don't let it fly away.

Mr. KUYKENDALL. The unit price is what the consumer ultimately pays.

Mr. STAFFORD. That is right.

Mr. KUYKENDALL. Exactly what authority is given to whom in this bill? I want the contractor mandated to allow the passthrough on fuel costs. How does that work physically?

Mr. STAFFORD. This mandates it if we approve the rulemaking procedure that is now before us and we have already made it part of the procedure that this be considered.

Mr. KUYKENDALL. Does the contractor have to request it?

Mr. STAFFORD. He has to pay it, anyway.

Mr. KUYKENDALL. Thank you.

Mr. STAFFORD. It takes a little give and take.

Mr. DINGELL. The time of the gentleman from Tennessee has again expired.

The gentleman from Washington.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Chairman, in the resolution there has been some question of your MC-43 (Sub-No. 2). You refer to your May 15 date as being the effective date. I want to be certain this does not require back payments to May 15 by all the regulated carriers, so whatever has been lost to date has been lost.

Mr. STAFFORD. That has been lost. We are not backdating anything.

Mr. ADAMS. In other words, you will take the position that May 15, whatever they were paying for fuel is the base period point. You will compute to whatever date the man makes an application, take the difference between the two and that amount of increase is to be paid by the lessee to the lessor; is that correct?

Mr. STAFFORD. That is right.

Mr. ADAMS. Now, if there were to be a rollback of prices, which many of us are going to certainly require if we lose on the windfall profits section, then any rollback in price, is that to be a situation where the regulated carrier can then rollback his compensation to the subcontractor based on the May 15 date?

Mr. STAFFORD. He is only filing for what has already happened anyway.

Mr. ADAMS. Suppose we roll it back to November 15 so that the price of new fuel is dropped? He, as I understand your system, the regulated carrier will be applying for rate increases. I believe Mrs. Brown described it as a surcharge energy increase.

Mr. STAFFORD. That is right.

Mr. ADAMS. If it is rolled back, does he then have the right to roll back to his independent owner-operator?

Mr. STAFFORD. That is right.

Mr. ADAMS. In other words, it is a sliding scale according to the May 15 base date?

Mr. STAFFORD. As Mrs. Brown says, it is a very flexible operation; it goes up and down.

Mr. ADAMS. What about the fact all of this will go to the eventual consumer? It will go to the shipper first. The shipper, we assume, will pass it on. Is there flexibility for the rate to go down, also, if there is a rollback, or a reduction in fuel price?

Mr. STAFFORD. This, of course, is not in the regular tariff. This is an extra item.

Mr. ADAMS. This is a surcharge as Mrs. Brown described it.

Mr. STAFFORD. Yes.

Mr. ADAMS. On the surcharge, Mrs. Brown, does it automatically go down or does the shipper have to complain?

Mr. BROWN. It may come in one of two or three ways. It could be commission; it could be shipper; or other types.

Mr. ADAMS. I see, but you are contemplating, Mr. Kahn, or Mrs. Brown, a general rulemaking procedure for a flat increase up and down, or are you going to handle it on an individual shipper regulated carrier basis?

Mrs. BROWN. Actually, the increase up has been handled addressing itself to the whole motor carrier industry, but handled specifically by the Tariff Bureau or independent action, as such, and a role in the opposite direction could be handled in the same way. The Commission, as yet, has not decided on the direction.

Mr. ADAMS. On your own motion if you wish to do so?

Mr. BROWN. Yes.

Mr. ADAMS. Question: Some of us have watched this trucking industry for a long time—I know you have—there is an enormous number of independent operators—and we have tried to change it so they were not completely out from under regulation. A lot of people are in this problem because they didn't want to be under regulation.

Mr. STAFFORD. I think this is one of the biggest selling points for regulation that ever was.

Mr. ADAMS. That is right, so the energy crisis has chased a lot of the rabbits out of the woods. We are going to try to help them in this process, but we are talking, as the chairman mentioned, about economic regulation.

Mr. STAFFORD. That is right.

Mr. ADAMS. You have had in the past a safety regulation where all trucks comply.

Mr. STAFFORD. Yes.

Mr. ADAMS. Is that in your jurisdiction?

Mr. STAFFORD. No; it is not, but it is considered in our cases, matters of this kind.

Mr. ADAMS. Is that information available so you can get the numbers of trucks as compared to the number of people under economic regulation, so that you know how many people you have got out there that are not going to be touched by this? Because any independent carrying cattle, for example, is not going to be helped at all. Anybody carrying agricultural products is not going to be helped. Anybody carrying any exempted commodity will not be helped; correct?

Mr. STAFFORD. Correct.

May I make one comment?

I spent 2 days with the American National Cattlemen's Association in San Diego 2 weeks ago to speak to their legislative committee. They are trying to make up their mind whether they really want to support the regulation of the cattle carriers. The cattle carriers—they feel they need it.

Mr. ADAMS. They have stopped?

Mr. STAFFORD. Yes; they have stopped, and right now—I told them I thought they were being a little shortsighted if they did not take on regulation, economic regulation, but they kind of left it in midair somewhat.

Mr. DINGELL. The Chair recognizes Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman.

I would like to explore the question Mr. Adams had. I had a different concept of this. As I understand it, 50 percent, I believe the quote was from Mr. Kahn, 50 percent would be helped. The remaining 50 percent not affected by this legislation are those carrying exempt products or carrying truck-owner owned products; those are the two that make the additional 50 percent?

Mr. STAFFORD. That is right.

Mr. SHOUP. Those carrying exempt products or those carrying their own products can raise their prices as much as they want?

Mr. STAFFORD. That is right.

Mr. SHOUP. They are not regulated so they don't need legislation to allow them to pass on the cost?

Mr. STAFFORD. Yes.

Mr. SHOUP. So, really this bill speaks only to those who do not have the ability to pass on the increase in fuel costs?

Mr. STAFFORD. That is right.

Mr. SHOUP. Am I correct that the increase in fuel costs is under the control of the Cost of Living Council?

Mr. STAFFORD. It is my understanding that the Council will not permit dealers to raise fuel prices but so much and only once a month. I am not sure I know what the percentage is.

Mr. SHOUP. Would you say that the increase in fuel costs has been approved to date, the large increases have been approved by the Cost of Living Council?

Mr. STAFFORD. That is beyond my expertise; I don't know.

Mr. SHOUP. It would seem to me, and I am surprised that you don't, Mr. Chairman, know on that, that it is because of the effect that any increase in cost of the operation would have on tariffs that are allowed, and it would seem that there would be some responsibility by the Cost of Living Council, or whoever authorizes it, and also concern by you for a fair tariff.

Mr. STAFFORD. I agree with that point. I did read the other day, though, that the Internal Revenue Service had made a check of a great number of these service stations and that a very small number of them were gouging or going beyond the proper price limitation set.

Mr. SHOUP. Has the Cost of Living Council or any other Government agency contacted you as to the effect the increase in fuel costs is having on the regulated truck industry?

Mr. STAFFORD. Has any other agency?

Mr. SHOUP. Yes.

Mr. STAFFORD. We have been contacted by about everybody in the Government and outside the Government right now.

Mr. SHOUP. May I be more specific? Have they asked for your opinion whether such things would be allowed or what effect it would have on the regulated carriers?

Mr. STAFFORD. No; the increasing cost of fuel, you mean?

Mr. SHOUP. Moving to another direction but in this same vein, as you heard the chairman say, his town is apparently encircled by some force that doesn't allow anyone to bring trucks in, which seems to be a clear violation of any laws we have on the books. Is that correct? Are there laws on the books that prevent hampering of interstate commerce?

Mr. STAFFORD. Yes. There is a section in our act and I called this to the attention of the group of so-called leaders who were in seeing me one day and pointed out that they had a responsibility to see that the Nation's commerce kept moving, but two or three gentlemen in the audience spoke up and said, "Yes, and what are you going to do about it?" That is about right.

If interstate commerce is having responsibility for the regulation of it, that if the commerce is being hampered then, have you—and you had information that it was being hampered—have you requested that the Justice Department take action to insure that commerce continues to flow unhampered?

Mr. STAFFORD. No; I have not. Every day I read that the American Trucking Associations have asked the President, that the Teamsters have asked the Attorney General—it is very evident.

Mr. SHOUP. May I request, then, as a Congressman and maybe just as a citizen, that the Interstate Commerce Commission, if they have information of such illegal activity, that that information be passed on to the Justice Department and if they receive it and don't take action, we will find out why they don't.

Mr. STAFFORD. It is of great concern to all of us what is happening.

Mr. SHOUP. Thank you. Perhaps what we are doing—maybe I could include ourselves; maybe we are trying to pass the buck all the time and maybe it is time we stopped doing that.

I yield back the balance of my time.

Mr. DINGELL. The Chair recognizes the gentleman from Maine, Mr. KYROS.

Mr. KYROS. Mr. Stafford, I only have one question and then want to yield my time to Mr. Adams.

My question is this: Under the passthrough procedure, is all we are doing, really, letting the consuming public pay the increased costs?

Mr. STAFFORD. That is right.

Mr. KYROS. If we keep this up with railroads, planes, and power companies, the public is going to keep on paying increased oil prices. There won't be much incentive to roll back the prices at the Government level.

Mr. STAFFORD. Sir, that is beyond my expertise.

Mr. KYROS. I don't know if it is beyond your ken or jurisdiction.

Mr. STAFFORD. From a personal point of view, I would say you are right.

Mr. KYROS. Would you say trucks and transportation are not only necessary in keeping things at what people can afford? Wouldn't it be better to wait and roll back the prices of diesel fuel and gasoline instead of working for a passthrough?

Mr. STAFFORD. Well, I guess that is up to everyone's own judgment whether it would. I have no specific information on that.

Mr. KYROS. Well, from where you sit as a regulator, wouldn't it be important to figure out what percentage of the total costs of the industry are now taken up by fuel and being able to show that those costs are unreasonable in the light of other operating costs and there the Government should work really at the other end rather than passing on the costs to the consumer?

Mr. STAFFORD. You get into a bigger problem, what is it going to take to get the fuel oil and whether that means a higher price to get it, I don't know. So, you are beyond my expertise in this.

Mr. KYROS. Let's see how beyond it is. For example, if your Commission had said we don't think this is the best way to do it, wouldn't it be better to stand fast here, not raise any additional cost to the consumer and shipper and demand that costs be reduced on fuel?

Mr. STAFFORD. Well, I guess you get into the controlled economy pretty much more, and I just don't know whether that is the right answer or not for the big picture.

Mr. KYROS. I yield the rest of my time to the gentleman from Washington.

Mr. ADAMS. Following the question of my good friend from Maine, does the Cost of Living Council have control over the tariffs paid by your regulated industry or have they left the regulated industry completely up to you?

Mr. STAFFORD. Completely to me, or to the ICC.

Mr. ADAMS. That is what I mean, the ICC.

Now, the price that the shipper, or whoever is receiving the transportation, is his price controlled to the consuming public? In other words, I am trying to figure where the crunch occurs. Or is it, as the gentleman from Maine says, it all slides directly through finally to the consumer, or does somebody get caught in the middle?

Mr. STAFFORD. The truckers have been talking to me about how much more a new van is costing them this year than last year, and it is a pretty tremendous increase. I would say it is very difficult for the Cost of Living Council to hold down all facets of the economy, to make it balance.

Mr. ADAMS. Now, I am worried about the regulatory lag problem. Are you going to be passing through to the regulatory carriers their rate increase? In other words, does the subcontractor get it only when the regulated carrier gets it from the shipper, or is he going to have to pay it and then try and collect from the shipper at a later date?

Mr. STAFFORD. No; the carrier has to pay on whatever schedule he and the truck driver work out. This means immediately, and then he has to file a rate increase to take care of himself.

Mr. ADAMS. So, if he is 30 days behind in your process, then he is going to have to absorb it?

Mr. STAFFORD. Of course, as Mrs. Brown has pointed out, this was why this latest procedure was tied to the 10-day proposal that she had instituted, so that they can get quick action on this.

Mr. ADAMS. They will then only have a regulatory lag of 1 day or 10 days?

Mrs. BROWN. There are actually three procedures still open to them: A general rate increase; a pure general increase on 10-days' notice; and even a 1-day notice to a 29-day notice. It depends on their situation and how they present it.

Mr. ADAMS. The last question I have is on the trucker-cattlemen thing because we are getting into supply.

Isn't the basic problem there that the buyers of transportation service who are the buyers of the cattle have just, in effect, refused to

pay any more so these people have the choice of either going out of business—

Mrs. BROWN. Right. This really was the group creating most of the argument against the regulation at the meeting which I attended.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes Mr. Heinz, the gentleman from Pennsylvania.

Mr. HEINZ. Thank you, Mr. Chairman.

I would like to mention, Mr. Chairman, in the legislation that permits the Commission to take certain actions, should the Commission do so, it seems to me we face two problems. One is the speed with which the actual cost increases are passed along, and the other is the extent to which you can particularly prevent cost increases that are passed along that are not justified cost increases.

It seems to me you have a difficult job in that regard because you are talking about carriers that, in addition to having higher fuel costs, have other increased operating costs, for example, having to travel at a slower rate of speed.

What kind of policies do you have that will guide you in making wise and just determinations on this kind of problem affecting the compensation of these independent subcontractors?

Mrs. BROWN. Mr. Congressman, I wanted to say that the question you brought up is a very good one. I want to assure this body of Congress that the Commission is looking very carefully into what is justified and what is not justified, to whether it be an increase for energy costs or a general rate increase, and I think we have something here today that looks like just a pass-through. All they have to do is put it in and get 100 percent reimbursement on everything, but this is not true, by any stretch of the imagination.

Now, we developed in that energy procedure how they were to advance information to us because the one thing that we have to be careful about is that we are not granting any rate increase on those that are paying gasoline or diesel prices, say, that aren't legal.

We have to recognize that scalpers are out there, investigated by the IRS, and they found drivers having to pay an illegal price. So, that is the one thing we have to watch. We have the power of suspension. We have suspended some. We have investigated some.

Mr. HEINZ. I am glad to hear that.

Let me ask you further, before the energy crisis came along, how many separate rate decisions per week or per month did the Commission have to make?

Mrs. BROWN. The rate work has jumped so much in the last year that it is almost unbelievable, and to give the—

Mr. HEINZ. Can you give the committee statistics, at least for the record? Just supply them for the record if the chairman has no objection.

Mrs. BROWN. I will be glad to.

[The following information was supplied for the record:]

INCREASE IN RATE DECISION WORK LOAD

SECTION OF TARIFFS

Average number of tariff filings (tariffs, schedules, and amendments thereto) per month:

For 2-year period, October 1, 1971 through September 30, 1973...	26,754
For 4-month period, October 1, 1973 through January 31, 1974...	31,394
Percentage Increase.....	17.3

ACTUAL

For:		
October 1973.....	33,196	
November 1973.....	29,834	
December 1973.....	22,812	
January 1974.....	39,736	

125,578

SUSPENSION AND FOURTH SECTION BOARD

All work: (Number of adjustments—both increases and reductions) per month—	
For 2-year period—October 1, 1971, through September 30, 1973..	370
For 4-month period—October 1, 1973, through January 31, 1974..	325
Percentage decrease.....	12
Increase adjustments only: per month—	
For 1-year period—October 1, 1972, through September 30, 1973..	107
For:	
October 1973.....	145
November 1973.....	109
December 1973.....	165
January 1974.....	242
Average per month.....	165
Percentage increase.....	54

Mr. HEINZ. What is the difference in the size of your staff now versus a year ago?

Mrs. BROWN. Well, the drain on our staff, Mr. Congressman, I will have to tell you—I don't want to be a bleeding heart, but I want to tell you—

Mr. HEINZ. The difference in size?

Mrs. BROWN. We have about five more attorneys.

Mr. HEINZ. How many did you have before?

Mrs. BROWN. I will supply that for the record so I don't state it wrong.

Mr. HEINZ. Could you give us a rough indication?

Mrs. BROWN. The whole Office of Proceedings is 120 and by far the majority of that is in operating rates, and I would say the other half is split between rates and finance.

Mr. HEINZ. And, as a result of this legislation, if we pass it, and I suspect we will, would you expect a further acceleration of your workload, at least during the month of February?

Mrs. BROWN. We will have an acceleration, but have been experiencing that all along. If it is set up properly, we can handle it; we can do our best to handle it, even though there is more work in there. We definitely need more people, but the Chairman has transferred people from other divisions.

Mr. HEINZ. If I may continue for 30 seconds, I would like to add that it seems to me with the accelerated workload the Commission undoubtedly is facing, and will face more of on passage of this legislation, the committee should be forewarned that the consumers probably

will not receive the kind of scrutiny, through no fault of the Commission and their application whatsoever, of the rates to avoid unnecessary passthroughs that they probably deserve.

Again I say that without in any way suggesting that the Commission and your employees aren't doing your job; I am sure you are. It is just that the job has grown all out of proportion to your resources.

I thank the chairman.

Mr. DINGELL. Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

I would assume a prudent businessman being in the business of a regulated carrier would have from time to time attempted during the last year to secure revenue increases based on his increased costs of operation, including his increased costs of fuel.

Mr. STAFFORD. Yes; if he can support the increases, he should be filing. Some—just as late as yesterday, I had five or six filing. Mrs. Brown and I had some of the management people from the Southeast saying, because of the competition, they hadn't been able to file.

Mr. ECKHARDT. I understand some would not but, of course, some would have?

Mr. STAFFORD. Yes.

Mr. ECKHARDT. And if they can show that the cost of diesel fuel to operate the trucks has gone up, that would be a legitimate contention that would permit an adjustment of rates, would it not? I don't mean necessarily they could pass it on dollar for dollar, but you could take it into account in increasing their rates, couldn't you?

Mr. STAFFORD. Right.

Mr. ECKHARDT. Let's say the regulated carrier has increased his revenues by 12 percent over the last period from—what is it—the May 15 date, which will be the test date—I understand from your answers to Mr. Adams's questions there is no rollback to that date but, nevertheless, you would more or less assume that that 12 percent would have been received at about the level of anywhere from 8 to 9 percent, depending on the breaking point between the contractor and a regulated carrier.

If it is 75 percent, as you point out, about 9 percent of that would go to the contractor, presumably; is that correct?

Mr. STAFFORD. That is correct.

Mr. ECKHARDT. It might be as low as two-thirds to many rather than three-fourths, which would be about 8 percent?

Mr. STAFFORD. That is possible.

Mr. ECKHARDT. That is a reasonable bracketing.

If those rates have been taken into account, I realize there might be a lag and a lesser increase in the actual costs, but assume it had taken care of the increased costs, then the contractor would be in fair position, with respect to that period up until the 1974—

Mr. STAFFORD. I don't believe he would, really; things have escalated so rapidly the last couple of months.

Mr. ECKHARDT. He would have been brought back by the fact the changes did not meet the—

Mr. KAHN. He would fall behind because the fuel costs are a relatively small proportion of the regulated carrier's total cost.

Mr. ECKHARDT. I understand.

Mr. STAFFORD. And they are a very significant portion of the owner-operator's cost.

Mr. ECKHARDT. I recognize, as you point out, there is always a lag in an increasing price structure between rate adjustments and the cost of operation. We admit that. But, now, after the effective date of this act and assuming that such increases have been granted with respect to operating costs, nevertheless after the effective date, as I understand it, the entire increase in fuel costs over the May 15, 1973, period will be permitted to the contractor as an increase in his share of the take, is that not correct?

Mr. KAHN. There would be deducted from the amount due the owner-operator any increases that he already has obtained by virtue of the percentage of the line haul revenue paid him.

Mr. ECKHARDT. In other words, this would be 8 or 9 percent he had enjoyed. If it included in it partial increases in costs of purchasing fuel, that amount would be offset against the amount that he is additionally receiving after the effective date of the act?

Mr. KAHN. That is correct.

Mr. ECKHARDT. Of course, if that were not true, you would be passing on to the customer an inflated increase, would you not?

Mr. KAHN. Yes.

Mr. ECKHARDT. I am not quite sure how that is taken care of in the language of the order.

Mr. STAFFORD. I don't think the order, itself, has anything to do with the substance of what we do or don't do. All that you are proposing will do is give us the right to make our order effective at least in a day.

Mr. DINGELL. The time of the gentleman has expired.

Mr. KAHN, you have a comment?

Mr. KAHN. I want to make the observation that the proposed rule is subject to further clarification and modification, and any changes that need to be incorporated to make it clear will be made before the order is promulgated.

Mr. DINGELL. I notice the Chairman is nodding his head in strong affirmation of that.

Mr. STAFFORD. Maybe I was voting already.

Mr. DINGELL. The Chair would like to comment.

I notice the *Pillsbury* case imposes certain restrictions on you with regard to your appearance and with regard to certain actions of the agency.

I notice you are nodding, and, Commissioner Brown, both of whom I have great respect for, but it is not your intention to contravene the *Pillsbury* regulation with regard to an adjudicatory or, rather, to a matter before the adjudicatory status of which you are a part?

Mr. STAFFORD. That is correct.

Mr. DINGELL. You are both nodding affirmatively to that and I am sure I utter your thoughts at this time purely for purposes of the record and your comments today are not to be construed as contravening the mandates and provision of that particular case?

Mr. STAFFORD. That is correct.

Mrs. BROWN. Mr. Chairman, I might add we went to a lot of trouble to ask a lot of people to comment and to furnish their views in regard to MC-43 (Sub-No. 2), and we are going to look at those

comments. If you pass this legislation, we are going to have some time taken off that, off the Commission and off those people's time to comment, but we are going to look at those.

In many rulemaking proceedings, we have found that there was a slight something, or something major that needed to be done and the Commission has done it. And we are in a proposed rulemaking stage right now and until the comments are due in, according to this legislation, on the 13th and then the Commission would only have until the 15th. That is a short time but we will do that.

Mr. DINGELL. Thank you.

Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. Chairman, it is my understanding that the resolution that we have before us in one sense is a rather simple resolution. All it does is permit you to put into effect at any earlier date a proposed action of the ICC; is that correct?

Mr. STAFFORD. Any proposed action of the ICC in this case.

Mr. YOUNG. In other words, the matter of whether or not MC-43 (Sub.-No. 2) is desirable or undesirable is really not before this committee, is it?

Mr. STAFFORD. No; it is not before this committee. Nor, as the chairman said, are we taking a position on whether this is a desirable thing.

Mr. YOUNG. Now, I do have a couple of questions for background information.

Does MC-43 provide a time period as to when this would take place, when the mandatory reimbursements would commence?

Mr. KAHN. It contemplates that the reimbursements would occur at such time as the regulated carrier settles with the owner-operator that it employs. That varies with the carriers. Some do it weekly; some on a per-trip basis.

Mr. YOUNG. In other words, the time of effectiveness or implementation will be subject to an agreement between the owner-operator and the carrier?

Mr. KAHN. No. MC-43 (Sub.-No. 2) in effect modifies the agreement between the regulated trucker and the owner-operator; yes.

Mr. YOUNG. I don't know what the other witnesses are going to be on this legislation but what is a carrier—

Mr. STAFFORD. The other witnesses, in a sense like ourselves, cannot speak to the substance of what we are going to do.

Mr. YOUNG. Have you received any—what is the carrier's viewpoint with respect to this proposal?

Mrs. BROWN. We have a date for comments to be in by, February 13.

Mr. YOUNG. And you haven't got all their comments yet?

Mrs. BROWN. No, we don't.

Mr. YOUNG. Do you have any idea what their reaction will be, based on your experience?

Mrs. BROWN. It was just served on Monday in the Federal Register.

Mr. YOUNG. I would like to yield the balance of my time to Congressman Ware from Pennsylvania.

Mr. WARE. I thank the gentleman from Illinois. I will be brief.

I would like to make a comment, Mr. Chairman. I propose to vote for this resolution, vote in favor of it.

I have just received, within the past few minutes, a telephone message that another industry in my district is closing. This happens to be a food industry. It is closing because telephone calls to the office have told them that the homes of these employees will be burned unless some action is taken. And, I want, as emphatically as I can state it—

Mr. KUYKENDALL. Mr. Chairman, I would like the gentleman from Pennsylvania to be given the opportunity to repeat exactly what he just said.

Mr. WARE. I indicated at the outset I propose to vote for this resolution.

A few minutes ago, I received a call that another industry in my district is closing because of the threats of these owner-operators and this particular threat was directed to a food industry where they were told by telephone that the homes of their employees would be burned if they didn't stop shipping food. And, as emphatically as I can, I want to deplore and deery this action. I resent this kind of action. I have never heard from an owner-operator asking for relief.

This body, and I am sure the Interstate Commerce Commission, and the Department of Transportation, everyone in the Federal Government, wants to be helpful, wants to be equitable. But this type of action is only going to serve, in my opinion, to delay and even reach the point where I and others may change their minds about the kind and type of relief they should secure.

Mr. DINGELL. If the gentleman would permit, the Chair would ask him to yield for me to make an observation.

I have been discussing with members of the staff the further program of the committee. While I do not sit in this chair as chairman of the committee, I do make the following observation to the members of the Department of Transportation: They had better take action with the executive branch to see that the laws relating to violence and impeding interstate transportation are being fully implemented and enforced and will be fully implemented and enforced.

I don't like legislating on matters where we have a gun to our head, nor do I like legislating where there is violence and disobedience of law being used to procure relief, regardless of how legitimate the complaints might be.

We will hear later from the Department of Transportation and, if the gentleman wishes, I will do my best to assure cooperation from the Department of Justice. The Chair at this time thinks we probably better have the Department of Justice up here this afternoon.

Mr. Clerk, see to it that we have the Department of Justice alerted that they had better be prepared to appear at the appropriate time this afternoon with regard to this legislation.

The Chair recognizes the gentleman from Pennsylvania.

Mr. WARE. I trust I have expressed myself adequately.

Thank you, Mr. Chairman.

Mr. DINGELL. The Chair recognizes Mr. Preyer.

Mr. PREYER. Thank you, Mr. Chairman.

This is a field of arcane knowledge that I am not familiar with. I have two questions.

One question the gentleman from Texas has brought out. I think has been answered to my satisfaction. That is, there is nothing in

this order that would prevent your taking care of the double compensation problem.

Mr. STAFFORD. Right.

Mr. PREYER. My other question related to Mrs. Brown's comments about the surcharge method being a desirable approach. There is nothing in this order, is there, which makes that approach unavailable in any way?

Mrs. BROWN. No. All the avenues under the Interstate Commerce Act, the channels are open in regard to rates.

Mr. PREYER. Thank you.

I yield to the gentleman from Texas.

Mr. ECKHARDT. I understand the intention of the Commission, but I do not find that intention spelled out in the language that I have before me, which is proposed as an amendment to section 1057.4 of the leasing regulations of Interstate Commerce Commission.

As I read it, it says that compensation paid by the lessee after the effective date shall be increased on the basis of the cost of fuel purchased at lawful prices and borne by the lessor. Then it says that the amount of the increase shall be added to the compensation paid the lessor for leased equipment, and it describes how it will be computed. But I see nothing in the regulation that says, however, the compensation and the ultimate result shall be decreased by that portion of increases which have been given since May 15 based upon increased cost of fuel.

I see nothing in there that would prevent the contract carrier from coming in and saying, "Look, I am entitled to the total of this figure not decreased by a nickel." Now, if I were the lawyer for the independent contractor, I would say:

Yes, this may be fair but it isn't what the law says; I have not been making enough money and I want what the law says I am entitled to have.

Mrs. BROWN. I can only say to you we have put out proposed rules. We are asking for comments. We are sure to get comments, and then the final decision of the Commission will issue, and certainly these are points that we shall look to.

Mr. ECKHARDT. But isn't that what the 30 days is for? I mean the rule doesn't go into effect for 30 days, so there can be changes to accommodate these matters. Now, if we hurry the thing up, how are we going to meet these more or less delicate questions of balance and interest to consumers?

Mr. KAHN. The 30-day period pertains to the effective date for the final promulgation. The comment period the Commission proposed was an abbreviated one to begin with. It was something running from February 4, the publication date, until February 20. We have already taken steps to reduce the comments period from February 20 to February 13.

Mr. ECKHARDT. It still seems absolutely patent to me that in an administrative procedure where you have an opportunity to be heard and you have time for comment and you have time for reviewing comment, that any curtailment of the time provided in the act tends to reduce to a certain extent the sensitivity of the process by which the rule is put into effect. Is that not true?

Mr. STAFFORD. That is true, of course.

Mr. ADAMS. Would the gentleman yield?

Mr. STAFFORD. But under emergency situations, this is nothing new, of course.

Mr. ECKHARDT. I yield to the gentleman from Washington.

Mr. ADAMS. Has there been some indication by staff or by the Chair whether we are going to actually hear from the owner-operators or representatives of them or from the trucking industry itself?

My information and the knowledge I have of the trucking industry indicates to me, one, this isn't going to solve their problem at all for large groups of people. I am worried about the comment of the gentleman from Texas about whether or not the input and comments, there is enough time for them to get into the ICC on this matter.

The third thing is that there is some information that neither the owner-operators nor the regulated truckers, those involved in this, want it.

The final thing is that we have the group of people who are not affected by it at all who are going to be isolated by an action and left with no relief. I am talking now about those who have no contract with the regulated carrier or anyone else. I wonder if it is the plan of this committee that we hear from these people?

Mr. DINGELL. The Chair, if the gentleman will permit, will advise the committee he is prepared to hear anybody who wants to be heard. I am informed by the staff there have been no requests made of any private person to be heard on this matter, that the American Trucking Associations, the independent truckers, and so forth, have not indicated a desire to be heard.

Now, if we receive requests to be heard—I am sure that the chairman of the full committee, who is not sitting in the Chair at this time—I am sure the committee would be fair in hearing these persons.

It is the intention of the present occupant of the Chair to hear from the Department of Justice on this matter.

Mr. ADAMS. I thank the Chair, and I would simply observe I think committees of Congress tread on very dangerous ground when we jump to the relief of people who have not expressed their opinions on relief on the public record and are relying on self-help, because we don't know then whether we are meeting their problem or not.

Mr. HEINZ. Will the gentleman yield?

Mr. KUYKENDALL. Will the gentleman yield?

Mr. DINGELL. The Chair has to recognize Mr. Podell, but the Chair will, if the members have comment, recognize them at this time.

Mr. HEINZ. I would like to support Mr. Adams' comment. I find not one independent trucker, of whom I am alleged to have plenty in my district, western Pennsylvania, has contacted my Pittsburgh office. I called there this morning to make sure. Lots of consumers have called my office, but no independent trucker or anybody pretending to speak for them.

I have checked with others on our side over here and have yet to find one that has been called here in the District by the people that we are supposed to be helping.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. HEINZ. I will yield in a second, if the gentleman will let me work up to a fine degree of indignance.

I do find it quite remarkable that here we are legislating on a problem without anybody having explained to us what it is their problem really is.

Thank you. I will be happy to yield.

Mr. KUYKENDALL. Sometimes you have to judge the opinions of the enemy. I don't know whether members of this committee have gotten the frantic phone calls that I have begun to get in the last 45 minutes from certain people who are not finding it convenient to pass on this cost. I think that is a good sign that it is good legislation because, if the people that are not passing it on are making their subcontractors oppose it, that must mean they are guilty. I can't see anything in here that would offend any person who had the proper dealing with his subcontractors.

Mr. DINGELL. Gentlemen, we have to recognize Mr. Podell, who has been most patient, and then the Chair will recognize Mr. Murphy.

Mr. PODELL. Thank you, Mr. Chairman.

There were two points I wanted to bring out. The first was properly identified a moment ago; that was, who wants the relief that is being asked for here? I have not heard from anyone, and when Chairman Stafford was asked a short time ago whether he favored the legislation, I even detected a degree of hesitancy in his voice when he said, "Yes, we are not opposed to it." Am I correct?

Mr. STAFFORD. You were reading me too much. We didn't recommend this legislation to the Congress, but this has no bearing on the substance of what we might or might not do. This piece of legislation, as I read it, merely says that you, the Congress, want us to act much quicker.

Mr. PODELL. Perhaps, Mr. Chairman, we could find out before the day is over just who wants the legislation. But before—

Mr. STAFFORD. I hope you distinguish between this legislation and what we propose to do.

Mr. PODELL. I am talking about the resolution before us. We are talking about that specifically.

Let me ask you something else. Let me take a 2-minute course in elementary trucking business, if I may. It seems to me there are some 50 percent of ton-miles that are run by nonregulated carriers who are not subject to the jurisdiction of the ICC; is that correct?

Mr. KAHN. Yes.

Mr. PODELL. That is a ballpark figure. It would also seem to me that if I was a regulated carrier and I owned a 100 trucks, I could probably operate my 100 trucks a lot more efficiently and economically than 100 different trucking companies each owning an individual truck.

I could buy them cheaper, I could garage them cheaper, I could repair them cheaper and possibly buy parts and even fuel at bargain rates and operate them cheaper in that fashion. That would appear to me to be almost axiomatic. Am I correct or incorrect?

Mr. KAHN. Some truck operators would agree with that analysis, and obviously there are many who disagree.

Mr. PODELL. Would you feel, in the event the Podell Trucking Co. organizes and applies for a charter under your regulations and goes out and hires subcontractors, it is possible for it not to own

even one truck? Therefore it could be a shell running 500 trucks and none of us regulated by the ICC?

Mr. KAHN. The ICC would look to you as the certificated carrier, and you would be expected to publish the tariff charges, you would be expected to carry the cargo insurance, and otherwise we would look to you to assume responsibility for the transportation.

Mr. PODELL. All right, that is fair enough. But remember that I am just a shell with no other assets but an office, a secretary and a desk in my office, and yet I operate 500 trucks and your ICC only has jurisdiction over a desk and a lamp, really, when you boil it down.

The reason I bring this out is for the obvious question: Is it the purpose of nonregulated carriers to lease their trucks to regulated carriers or to certificated carriers purposely? Do regulated carriers hire individual owners for the purpose of avoiding any ICC regulation that may inure to the independent owner?

Mr. KAHN. No, we have found that it has been a matter of economic rationalization rather than an attempt to avoid Interstate Commerce Commission regulations that prompts these judgments.

Mr. PODELL. Aren't there certain things a trucker must do to qualify for certification regulation?

Mr. KAHN. Yes.

Mr. PODELL. Certain requirements?

Mr. KAHN. Yes.

Mr. PODELL. And obviously, if he doesn't want to meet those qualifications, whatever they may be, he doesn't do it and rents his truck to a certificated carrier at approximately 80 percent or so, gets 80 percent of his money. Isn't that what is happening?

It seems to me, I wouldn't criticize the ICC, but it seems to me there is something wrong when a certificated carrier who could own its own operation far more efficiently and effectively goes out and subcontracts its work some place else.

Mr. DINGELL. The time of the gentleman has expired.

Mr. MURPHY. May we have an answer to that question?

Mr. DINGELL. The Chair recognizes the witness for that purpose.

Mr. KAHN. I understood the Congressman as making a statement rather than asking a question.

Mr. PODELL. Does the certificated carrier specifically hire non-regulated trucks for the specific purpose of avoiding ICC regulations?

Mr. KAHN. No, the Commission regulates evenhandedly, and the certificated carrier using employees to drive its trucks and the purchaser using owner-operators. We have found no evidence of circumvention of the requirements of regulations by any one group more than another group.

Mr. PODELL. If you don't regulate them, how do you know?

Mr. KAHN. We regulate the carrier.

Mr. PODELL. The certificated carrier, but not the independent owner.

Mr. DINGELL. The Chair has given the gentleman all the time permitted under the 5-minute rule.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

It is a pleasure to have you here.

What percentage of the transportation industry operates in what we have known for years and have called the gray area?

Mr. STAFFORD. Well, we talked about this a few minutes ago, and our General Counsel felt that the unregulated group has ton-miles of somewhere in the neighborhood of 50 percent.

Mr. MURPHY. And those operating in the gray area are generally not certificated carriers, is that right?

Mr. STAFFORD. No, they are not.

Mr. MURPHY. Because they could lose their certificates in those circumstances?

Mr. STAFFORD. That is right.

Mr. MURPHY. So the owner-operator would be the one operating in the gray area?

Mr. STAFFORD. No, not necessarily.

Mr. MURPHY. Well, who operates there?

Mr. STAFFORD. A private company doing private company business, owned by a private company carrying its own business, or the cattlemen carrying cattle, livestock carriers who are not regulated, anything in the agricultural area which are not under regulation.

Most of the owner-operators are under contract to regulated carriers. Most of them in the irregular route conference.

Mr. MURPHY. What percentage of the violence—and I am sure your investigators have been out in your different regions and territories—who has been responsible for the violence on the roads and some deaths in some parts of the country in these recent weeks?

Mr. STAFFORD. We found none of it from our regular route truck companies. I can't name what ones there are. We do have reports from our field people about the various areas where there are problems, what the situation is. But since we are not or have no police authority, there is not much we can do.

Mr. MURPHY. From your intelligence collection, what—who has been causing this violence? What segment of the industry has been causing it?

Mr. STAFFORD. It appears that it is some of these owner-operators who are creating it. However, I think there are some indications that there are others, private owners.

Mr. MURPHY. What?

Mr. STAFFORD. Private owners in private business.

Mr. MURPHY. Private shippers?

Mr. STAFFORD. Private owners. I can't differentiate about who they belong to, I don't know.

Mr. MURPHY. What is the difference between a private owner and an owner-operator?

Mr. STAFFORD. Not a great deal, except I differentiate between the two by saying one contracts out; we have some of those. A number of them have been fired, their operations have broken down. Many have not. But most of them are just parking their trucks and quitting; you know, not operating.

Mr. MURPHY. You see, we go back to the point raised by the gentleman from Pennsylvania: Who is complaining about this crisis and who is creating it and what remedies are going to properly—

Mr. STAFFORD. The people who are complaining the most are the packing companies, for instance, who have had to close down their

slaughter houses, their packing plants. The people who are trying to ship food, such as citrus, such as fruits, such as vegetables. We are getting a lot of complaints from these areas.

Mr. MURPHY. Those shippers who are complaining, do they normally use certificated carriers or owner-operators?

Mr. STAFFORD. Owner-operators. Most are wanting us to do something, or wanting the Government to do something. Most say their drivers would operate if they were not afraid or whoever is doing the violence.

Mr. MURPHY. Then why do they use owner-operators in lieu of certificated carriers?

Mr. STAFFORD. As the general counsel said, most are using them for financial reasons; they don't have to put down the money to get in business.

Mr. MURPHY. So, in effect, this legislation will mitigate against the certificated carrier to come to a marginal transportation?

Mr. STAFFORD. I wouldn't say it is marginal. The irregular route, which is the basic owner-operator, is not a marginal business in a number of instances.

Mr. MURPHY. What effect would emergency legislation that is presently being debated and has passed significant portions of it through the House and Senate, would rollback prices have on this resolution?

Mr. STAFFORD. What effect would a rollback have on this legislation?

Mr. MURPHY. Yes, on this resolution.

Mr. STAFFORD. Well, nothing, actually, because any rollback is for the future, if there is a rollback. Under our order they have to file on the basis of what their costs have been.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair observes that the time of the gentleman from New York has expired.

The Chair observes there are a number of papers relating to the orders, and without objection those documents will be inserted in the record at this point by the staff.

[The documents follow:]

TITLE 49—TRANSPORTATION; CHAPTER X—INTERSTATE COMMERCE COMMISSION; SUBCHAPTER A—GENERAL RULES AND REGULATIONS; PART 1057—LEASE AND INTERCHANGE OF VEHICLES

ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D.C., on the — day of February, 1974.—Ex Parte No. MC-43 (Sub-No. 2).

ADJUSTMENT OF COMPENSATION FOR EQUIPMENT LEASED BY MOTOR CARRIERS OF PROPERTY BECAUSE OF RISING FUEL COSTS

This rulemaking proceeding, instituted on our own motion on January 30, 1974, and published at 39 FR 4488, looks toward the modification of our regulations governing the lease and interchange of vehicles (49 CFR 1057). The change proposed would require that the compensation paid for leased equipment by certain motor common or contract carriers of property subject to part II of the Interstate Commerce Act, 49 U.S.C. 301 et seq., be adjusted to reflect rising fuel costs where the lessor is responsible for supplying the fuel. To accomplish this, the following two new sentences would be added at the end of section 1057.4 (a)(5) which now requires that compensation paid by the lessee for the rental of equipment be specified in the lease:

Compensation paid by the lessee shall, on and after _____, 1974 (the effective date of the proposed regulation), and notwithstanding any other arrangement therefor, be increased by an amount equal to the increased costs of fuel purchased at lawful prices and borne by the lessor, provided the lessor is responsible for supplying the fuel consumed in operations conducted under the lease. The amount of such increase shall be: (i) added to the compensation paid the lessor for the leased equipment; and (ii) computed by subtracting from the lawful prices actually paid or to be paid by the lessor for fuel consumed in the operations for which the equipment is leased, the lawful price or prices of the same type of fuel under the same pricing practice in effect on May 15, 1973.

The initiating notice and order, incorporated herein by reference, fixed February 20, 1974, as the date on or before which written data, views, or arguments may be submitted on the proposed rule. As a result of the adoption by the Senate on February 5, 1974, of Joint Resolution No. 185 introduced in response to the emergency arising out of an expanding work stoppage among independent truckers, a corrected order shortening the comment period to February 13, was served February 6, 1974, and published at 39 FR 4787.

The Joint Resolution, later adopted by the House of Representatives and then signed by the President on February 8, 1974 (Public Law 93-249), requires that our final order in this matter take effect no later than February 15, 1974.

All comments submitted with respect to the proposed modification have been given due consideration. Those parties submitting such representations are identified in the appendix hereto. In sum, their representations reveal the following major inquiries and criticisms with respect to the proposed action: (1) that we lack the statutory power here to specify the compensation to be paid for leased equipment or to alter the terms of existing rental contracts; (2) that the considered rule is unclear in scope and would not benefit lessors of equipment used in agricultural or perishable operations; (3) that the proposed rule has been rendered unnecessary in view of our entry on February 7, 1974, of Special Permission Order no. 74-2525, which will be discussed subsequently herein, or that the action taken herein must, at the least, be tied to the Special Permission Order; (4) that the considered regulation is rigid and complex, and soon would prove to be a source of many disputes over compensation among carrier lessees and equipment lessors; (5) that the proposed rule would cause the expenses of carriers leasing equipment to increase and such expenses ultimately must be borne by the shipping public and consumers; (6) that the financial stability of many carrier lessees would be jeopardized by the considered regulation; (7) that our contemplated action fails to recognize that consideration already has been given to increased fuel costs and that many equipment lessors already have been adequately compensated for such increases; (8) that the proposed modification would be difficult to enforce and there is no effective machinery for resolving disputes that will arise under it; (9) that the proposed rule should be modified to allow lessors and lessees mutually to agree on additional compensation to offset increased fuel costs and to waive the protections and benefits intended; (10) that any rule such as the one proposed should not be retroactive and should have a fixed termination date; and (11) that the proposed regulations would have a negative environmental effect.

DISCUSSION

Jurisdiction.—Our authority to promulgate regulations governing the lease of motor vehicle equipment, including the compensation paid therefor, was judicially confirmed by the Supreme Court in *American Trucking Associations, Inc. v. United States*, 344 U.S. 298 (1953). It has since been legislatively recognized by the approval on August 3, 1956, of Public Law No. 957 (70 Stat. 983) amending section 204 of the Interstate Commerce Act. Not only does that statutory amendment expressly preclude us from regulating the duration of, or the compensation paid for, the lease of equipment used in agricultural or perishable operations, as more fully set forth in 49 CFR 1057.4(a)(3)(i), but it also serves to acknowledge our ability to exercise such power with respect to all other equipment leased to common and contract carriers by motor vehicle licensed by us.

The right to contract would not be unconstitutionally impaired were the proposed regulation adopted. By its terms, the prohibition against "impairing the obligation of contracts", found in Article I, section 10, clause 1 of the United States Constitution, runs only to the actions of a State. The argument that this Commission may not constitutionally alter the terms of contracts to the extent that they apply to compensation paid for leased equipment is thus without

foundation. The Supreme Court itself, in the cited proceeding, expressly rejected the argument that the due process clause of the Fifth Amendment to the Constitution, insofar as it pertains to the deprivation of property, prohibits this Commission from adopting regulations governing the lease and interchange of vehicles.¹ The essential elements of due process of law are notice and an opportunity to participate in the rulemaking process. Our notice instituting this proceeding, and our actions here, fully satisfy those requirements.

It has been further asserted here that we are powerless to act in the instant situation unless we first schedule and hold oral hearings in which the carriers and other interested persons may present and test evidence as to the presence or absence of a need for the proposed fuel adjustment in the compensation carriers pay to their equipment lessors. The Interstate Commerce Act does not, by its terms, require an oral hearing in this matter, and section 205(e) thereof [49 U.S.C. 205(e)] specifically recognizes that all interested parties are to be afforded an "opportunity for intervention in any such proceeding for the purpose of making representations to the Commission or for participating in a hearing, *if a hearing is held.*" (Emphasis added.) Because an oral hearing herein is required neither by statute nor, as seen earlier, by the Constitution, the procedure followed herein prescribing a rule having future effect and applicability is in keeping with the requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Our initiating notice and order further referred to the transportation problems to which the contemplated regulation would be responsive, the importance of "purchased transportation"—leased equipment—to regulated motor carriers and the public dependent upon their services, and our duty under the National Transportation Policy declared by the Congress, 49 U.S.C. preceding § 1, to develop, coordinate, and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. Since that time, Public Law 93-249, approved February 8, 1974, recognized the national emergency arising out of the expanding work stoppage among independent truckers, and looked to this Commission to take effective steps to alleviate that emergency. The argument that we remain powerless to act on a timely and reasonable basis cannot be accepted. An oral hearing in this proceeding, in our judgment, would serve no useful purpose, is not required, and will not be scheduled.

Scope and applicability of the proposed rule.—Before discussing in detail the comments received with respect to the proposed rule, it should be noted at this point that our regulatory authority is limited and that the parameters of our statutory powers appear to be widely misunderstood by many of those interested in the outcome of this proceeding. The Supreme Court held in *American Trucking Associations, Inc., v. United States, supra*, that the power to regulate equipment leasing lies within the broad provisions of the Interstate Commerce Act even though such authority was not then explicitly set forth therein. This was basically because the regulation of the leasing practices of carriers subject to our jurisdiction was deemed to be vital to our ability effectively to enforce the Act. By the same token, our leasing regulations and any proposed modifications therein cannot extend beyond those who are engaged in transportation subject to our regulatory control.

Insofar as we are here concerned, transportation services provided by licensed motor common and contract carriers of property basically consist of the physical interstate movement of consignments of freight from one place to another. Parties to contracts of carriage are limited to the shipper, receiver, and carrier or carriers involved. Demands for transportation service often are seasonal or otherwise variable, and, thus, from time to time service demands exceed available equipment supplies. To satisfy the service demands of their customers and to avoid the necessity of financing and otherwise supporting excessive transportation capacity during periods of reduced demand, many motor carriers resort to equipment leasing to smooth out the peaks and valleys of their operations. Numerous such carriers also rely heavily on leased equipment for conducting substantial portions of their regular operations.

Whether equipment is leased with or without a driver, the service is actually performed for the shipper and receiver, and it is provided by the lessee-carrier. No privity of contract exists between equipment-lessors and shippers and receivers when a regulated carrier utilizes leased equipment. Contractual rights

¹ The Court had this to say at page 322 of its Opinion: " * * * The rule-making power is rooted in and supplements Congress' regulatory scheme, which in turn derives from the commerce power. The fact that the value of some going concern may be affected, therefore, does not support a claim under the Fifth Amendment, if the rules and the Act be related, as we have said they are, to evils in commerce which the federal power may reach."

and obligations of lessors are limited to those derived from their contract with carrier-lessees. The failure fully to comprehend these relationships—wherein the licensed carrier serves the shipping and receiving public and the carrier obtains equipment from the lessor or independent owner-operator for use in that service—seems to have led to a widespread misunderstanding as to the nature and scope of the proposed modification in our leasing regulations here under consideration. These same misconceptions have carried over to certain of our Special Permission Orders providing for expedited procedures for publishing rate increases in the form of surcharges to reflect increased fuel costs.

Additional confusion seems to have developed over the use in the notice and order instituting this proceeding of the term "pass through." We also are aware that the meaning of the term "surcharge" as used in the context of the Special Permission procedures described in the succeeding section of this report has presented some difficulty. Both terms, of course, refer to adjustments to be made for increased costs of fuel. The instant proceeding, however, is limited in application to the actual amount to be added to the compensation paid or to be paid an equipment lessor by the licensed carrier in order to reflect actual increases in fuel costs borne by the lessor for fuel consumed in operations conducted with his leased equipment. A freight-rate "surcharge", in contrast, refers to a percentage increase in freight rates, up to 6 percent in Special Permission Order No. 74-2525, by which rates published in a tariff may be increased by regulated motor common carriers (including the lessee referred to above) and charged to shippers or receivers of property. It thus becomes readily apparent that the instant proceeding is concerned with fuel-cost adjustments as between the equipment lessor and the carrier-lessee (and not the shipper as some apparently have believed), while the special-permission surcharge procedure relates to such an adjustment as between the carrier and those who ultimately pay the freight charge. With the above clarifications in mind, we shall summarize the equipment and types of operations to which our leasing regulations apply or do not apply.

The provisions of part II of the Interstate Commerce Act authorize us to prescribe regulations with respect to the lease of equipment only by regulated common and contract carriers by motor vehicle. Section 204(f), however, specifically precludes us from regulating the duration of a lease or the compensation paid by such carriers for the use of certain equipment regularly utilized in agricultural or perishable operations.³ Hence, any regulation adopted in this proceeding will have limited application and will not apply to compensation paid for such motor vehicles as are within the limitations set forth in 49 CFR 1057.4(a)(3)(i)—basically those which are regularly used in the transportation of exempt agricultural commodities and perishable products thereof.

In recognition of the limited scope of our relevant statutory authority, it has been proposed in this proceeding that we recommend to Congress the amendment of the Interstate Commerce Act to embrace the transportation of currently exempt commodities. It is maintained that the proposed regulation would only benefit roughly 50 percent of the owner-operators who happen to lease their equipment to regulated carriers; that independent truckers who transport exempt traffic will continue to have to bear the entire burden of the recent fuel increases; that this class of trucker is no less entitled to relief; and that the public is no less dependent upon them. We believe that this matter deserves the prompt and careful study and consideration of the Congress and, while we do not now take a position with respect to whether legislative relief is necessary in this regard, we commend this recommendation to the Congress' immediate attention.

The effect of Special Permission Order No. 74-2525.—It is evident that some of those who have either commented publicly or submitted representations in this proceeding misconceive the purport of Special Permission Order No. 74-2525.

³ Section 204(f) provides as follows:

(f) Nothing in this part shall be construed to authorize the Commission to regulate the duration of such lease, contract, or other arrangement for the use of any motor vehicle, with driver, or the amount of compensation to be paid for such use—(1) where the motor vehicle so to be used is that of a farmer or of a cooperative association or a federation of cooperative associations, as specified in section 203(b)(4a) or (5), or is that of a private carrier of property by motor vehicle as defined in section 203(a)(17) and is used regularly in the transportation of property of a character embraced within section 203(b)(6) or perishable products manufactured from perishable property of a character embraced within section 203(h)(6), and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or (2) where the motor vehicle so to be used is one which has completed a movement covered by section 203(b)(6) and such motor vehicle is next to be used by the motor carrier in a loaded movement in any direction, and/or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

Public statements to the effect that all rates now may automatically be increased by 6 percent and those to the effect that all compensation for leased equipment may be raised by that percentage are erroneous. Certain other distinctions which exist between the Special Permission Order and the proposed rule change have been treated earlier herein. At this point, however, it is necessary to observe that, as here material, (1) the Special Permission Order allows rate increases to be published by motor common carriers of property on one-day's notice; (2) that such increases will be allowed *up to 6 percent*; and (3) that revenues produced by such percentage surcharges as are allowed are to be passed-through to those who directly bear the burden of increased fuel costs. The rule here proposed, on the other hand, is directed toward compensating, with or without publication of such surcharges by motor common carriers, lessors of equipment who participate in the transportation of property by motor common and contract carriers.

Experience of this Commission under Special Permission Order No. 74-1825, as amended, revealed—and attention was drawn to this fact in the initiating order herein as well as in the amendment of the original order and the adoption of Special Permission Order No. 74-2525—that a number of carriers failed to avail themselves of the opportunity to publish increased rates under the expedited procedures authorized. In recognition of the needs (a) for authority to publish rate increases on one-day's rather than 10-days' notice, and (b) for eliminating the necessity to supply supporting data obtainable primarily through experience under increased fuel costs, Special Permission Order No. 74-2525 revoked the earlier-authorized procedures and adopted the procedures which now apply for all motor common carriers. Carriers still are not *required* to publish such increases although it was expected—and recent experience amply bears out that expectation—that more would do so than had been the case under the former procedures.

Nevertheless, the problem of inadequately compensating lessors of equipment still exists and the potentiality of its contributing to work stoppages directly affecting regulated carriage and indirectly affecting all transportation and commerce continues. Those participants who now argue that issuance of our latest special permission order negates any need for the relief under consideration in this proceeding ignore the possibilities that carriers, for competitive and other reasons, may not file for increases in the form of surcharges and that carriers may file for surcharges which will not result in adequate compensation to the owner-operators. They also overlook the fact that owner-operators reportedly are responsible for more than 20.5 percent of the total intercity miles operated by authorized contract carriers not subject to the Special Permission Order. Hence, representations to the effect that this proceeding should be discontinued because of the adoption of Special Permission Order No. 74-2525 are based on invalid assumptions and are, therefore, rejected.

Complexity of the proposed rule.—By far the vast preponderance of the representations received from motor carriers licensed by us complain that the contemplated relief is overly complicated and burdensome to the carriers who utilize leased equipment in their operations, and that the regulation in the form proposed in our initiating notice and order fails to take account of those fuel-cost adjustments previously made by the carrier-lessees and passed on to the owner-operators. These two major issues form the nucleus of the substantive criticisms directed to the initially proposed rule, and it is on these problems that we shall next focus our attention. We might also point out here that the regulation we adopt has been modified in at least a partial response to these problems.

Certain of the arguments advanced by respondents and others that the proposed modification is too complex for reasonable application rest on the premises: (1) that carrier-lessees would have to be informed of an almost infinite number of "lawful" prices of fuel in effect throughout the country on May 15, 1973; (2) that computations based on the differences between the lawful fuel prices paid on May 15, and the lawful prices paid after the effective date of the proposed rule, present similar difficulties and also invite certain types of illegal and fraudulent activity, obviate the incentive of users of fuel to seek out the cheapest sources of available fuel, and would cause lessees to underwrite, and the shipping public ultimately to bear, the added costs engendered by such problems and activities; (3) that the proposed rule leaves those who would be bound by it without a meaningful remedy for minimizing or eliminating its misuse; and (4) that consideration should be given to the establishment of monthly averages based on average fleet base prices of fuel.

As we view it, however, the carrier-lessees would not, as has been suggested, have to go to any great length to obtain information as to the pertinent fuel

prices lawfully in effect on May 15, 1973. That date was selected, in part, because it antedates the period of severe fluctuation in fuel prices and because it would be representative of the dramatic increases in fuel costs that many equipment lessors have heretofore been required to absorb. The carriers' existing records would first provide an excellent source of information on such prices, as is evidenced by a number of the representations submitted in the proceeding demonstrating that the carriers, for State tax and other purposes, maintain extensive records as to the costs of fuel consumed in their operations. Such records should prove to be immensely helpful in all instances where operational patterns have not changed substantially since the base date. Each lessee would have sufficient economic justification, and therefore can be expected, to examine the claims of lessors based on what appear to be unreasonably low base period prices and to investigate and challenge the authenticity of them. Similarly, lessees would be expected to investigate and question what appear to be unreasonably high current prices for fuel, based on the information readily available to them. Average prices of fuel for purchases on the base May 15 date and after the effective date of the rule, mileage records for the same or similar operations, and average amounts of fuel consumed in the past in operations of the same or similar equipment could serve as guidelines to alert lessees to unreasonably high fuel-adjustment claims. The base-date cost would not change and, for those owner-operators whose equipment regularly is leased, the computations would be complicated to a limited extent only by the amounts paid for purchases made in the future. And this aspect of the problem does not appear insurmountable, for at least one respondent organization, consisting of household goods carriers, reportedly maintains for its members current information regarding the prices and practices of about 800 fuel-stops throughout the country.

It must be remembered that this Commission's leasing regulations specifically require carrier-lessees to exercise complete possession, dominion, and control over operations conducted with leased equipment. 49 CFR 1057.4(a)(4). Thus, a carrier-lessee may—and, where necessary, it will be expected to—specify routing and fuel stops to be utilized by those who lease equipment to it under the regulations. The responsibility and commensurate authority to control operations conducted with leased equipment, and to choose the equipment lessor in the first instance, also adequately enable carrier-lessees to control most, if not all, of the potentially abusive practices of unscrupulous lessors about which fears have here been expressed by the responding carriers.³

It must also be borne constantly in mind, in appraising the extent of the burdens that would be placed upon the carrier-lessees by our adoption here of an appropriate fuel-adjustment rule, that the carriers' ability to augment their own equipment fleet is largely a privilege and not a right under the statute.⁴ The continuation of this privilege (which has been called into question by a number of the parties here) carries with it a number of significant economic and competitive advantages against which the added burdens of which they complain must be weighed. Those advantages include, but are not limited to, the ability: to expand or contract their operating fleets as demands for service fluctuate; to minimize the need for maintenance facilities, parts inventories, and service personnel; to conduct operations from smaller terminal facilities and equipment parking areas; to stimulate productivity in the driver work force; to avoid taxes; and in some instances to avoid licensing fees.

Suggestions that monthly or other averages of fuel-price increases should be employed, that additional fuel allowances should be based on mileage, and that other methods of computing such adjustments not discussed elsewhere herein should be given greater weight, all fail to accord sufficient attention to the basic thrust of the proposed rule change. As has been pointed out earlier herein, equipment lessors should be allowed an adjustment in compensation only for those fuel prices actually paid and then only to the extent that such prices have increased since the base period. The use of averages and other devices, while they might appeal to provide greater ease of computation in certain instances, tend not to be realistic in the sense of making the equipment lessors whole. It was the absence

³ This appears to be an adequate response, too, to the argument of Bray Lines, Incorporated, to the effect that independent owner-operators would be required, by the proposed rule, to take on more of an employee relationship with lessees than is permitted under criteria established by the National Labor Relations Board.

⁴ The contention, raised by one of the parties hereto, that section 208(a) of the act, 49 USC 308(a), specifically safeguards the right of the carrier to add to its equipment by leasing or otherwise, and precludes Commission control over the carrier's leasing practices, was specifically rejected by the Supreme Court in the *American Trucking Association* case, *supra*.

of a means for the lessors being made whole which was the common foundation for this Commission's action in instituting this proceeding and for the independent truckers' recent protests. Accordingly, we are not persuaded by contentions which fail to embrace that basic premise. In recognition of the abundance of opposition to the proposed rule on the grounds that it is likely to be cumbersome in application for certain types of operations, however, we will later discuss the feasibility of an alternative plan designed to achieve the sought goal with a minimum of complexity.

Some representations contain assertions that the proposed rule fails to take into account the facts (a) that certain lessors of equipment may not have purchased fuel on May 15, 1973, (b) that their equipment may have been purchased new or replaced and leased for the first time subsequent to that date, or (c) that some lessors may hereafter lease their equipment for the first time.

It must be recognized that not all equipment now in service was fueled on May 15, 1973. The owner-operator of such equipment may then have been on vacation, ill, or otherwise unable to drive. The equipment may have been undergoing repairs or maintenance servicing and therefore not operated. And the equipment in service on that date may have since been retired, wrecked, or sold.

The proposed modification basically is intended to alleviate an inequitable situation—one in which an owner-operator can no longer economically operate in the absence of some form of relief from rapidly-rising fuel costs. The May 15 date was selected because that is the date on which pricing controls on fuels were modified by the Cost of Living Council and for the reasons alluded to earlier herein. Thus, the purpose of the rule would be served were it made to apply to the price actually paid or an obligation undertaken to pay for the purchase of fuel last preceding May 15, 1973. In the event a lessor of equipment leased his equipment for the first time on a date subsequent to May 15, 1973, or hereafter leases his equipment for the first time, the purpose of the rule would be served if the critical price for application of the rule were to be the price paid for the lessor's first purchase of fuel subsequent to May 15th.

Allegations are made that the proposal overlooks the complexity of applying it in a situation in which a trip is begun or ended with a partially filled fuel tank, with or without intermediate refills, with the fuel thus consumed purchased at the same or different prices. Whenever a full tank of fuel is completely consumed in an operation conducted with leased equipment, no problem would seem to be presented. Whether purchased at the same or different prices, the total cost of the fuel can readily be computed. However, when a trip is commenced or terminated with a partially filled fuel tank, it would be necessary to compare the overall mileage of the trip with the total amount of fuel consumed and document in the lessee's record of payment of compensation the fuel-consumption averaging employed for the beginning or end of the trip or both, as the case may be.

Fuel-cost adjustments previously made in carriers' compensation for leased equipment.—As noted earlier, the intent of the proposed modification is to remedy an inequitable situation by providing additional compensation to those equipment lessors who are responsible for fuel expenses under a lease, and to do so to the extent that the amount currently paid for such fuel exceeds the costs thereof on May 15, 1973. Contrary to the fears expressed by numerous participants in this proceeding, we do not intend to require double compensation in those instances where the compensation paid by a carrier for leased equipment already has been adjusted in whole or in part for the specific purpose of reimbursing the lessor for increased fuel costs. The intent of the rule may best be illustrated by the following three examples:

Assume 31 cents was paid by the lessor for each gallon of fuel purchased on May 15, 1973, and the current price for the same is 44 cents-per-gallon:

(a) If no adjustment has been made in the compensation paid for equipment leased after May 15th, the additional amount which should be reimbursed to the lessor would be 13 cents-per-gallon multiplied by the number of gallons consumed in operations performed under the lease.

(b) If the compensation for leased equipment has been adjusted upward to an extent which equals or exceeds 13 cents-per-gallon by passing on to the lessor fuel-cost rate increases or surcharges, no additional reimbursement would be allowed.

(c) If the compensation paid for leased equipment has been adjusted upward by an amount equivalent to 7 cents-per-gallon, the reimbursement to the lessor would be 6 cents-per-gallon times the number of gallons consumed in operations conducted under the lease.

A number of respondents argue strenuously that they have acted responsibly during the period since May 15, 1973, by periodically increasing the compensation they pay to owner-operators of equipment to offset increased fuel costs. The form of these increases, they say, has a broad range and includes such things as raising rates (which would be beneficial to lessors compensated on a percentage-of-revenue basis), increasing mileage allowances, and absorbing such other expenses as fuel taxes that may have increased, licensing fees, and certain expenses incurred in conducting empty vehicle operations. Therefore, they maintain that any rule adopted herein should allow them to reduce fuel-cost adjustments computed thereunder by the amount or amounts of increased compensation which their equipment lessors already enjoy.

To the extent that such increased compensation has taken forms other than a percentage of specific rate increases, however, there would be no practicable way to ascertain whether such prerequisites as the carrier's payment of licensing fees or the absorption of other expenses are the direct result of increased fuel costs or attributable to the success of the owner-operator in negotiating some other basis for added compensation or fringe benefit. As a consequence, the rule we here adopt will not take these fringe benefits into account in arriving at a proper fuel-adjustment formula for application to the compensation paid under an equipment lease. The carrier-lessee and the equipment-lessor will be free to renegotiate such fringe benefits as may have been predicated on the recently dramatic increases in the price of fuel to avoid over-compensation for such price increases.

Those participants who urge us to allow lessors and lessees mutually to agree on fuel adjustments imply in their representations that adoption of the proposed rule would preclude their freely negotiating with owner-operators mutually acceptable leases. It is true, of course, that parties to equipment leases have been relatively free to negotiate the terms and conditions of the leases. A number of respondents point with justifiable pride to their already having made appropriate fuel adjustments in their arrangements prior to the initiation of this proceeding. The failure of some to do so, however, contributed to the public need for a mandatory fuel-adjustment rule to be added to our leasing regulations. This fact, taken in conjunction with the distinctions discussed earlier herein between the proposed rule and the special permission order, and the recognized unevenness that has characterized the bargaining positions of the carrier and the independent trucker, imply demonstrate the plain public necessity for not allowing in the future the same degree of latitude as was enjoyed in negotiating the terms of leases to the extent that they govern compensation of owner-operators. That is a matter which, because of the overriding public interest, can no longer be left completely in the hands of the parties to the lease.

Further clarification also might be helpful insofar as certain methods of determining compensation are concerned. In the event compensation is paid for leased equipment on a percentage-of-revenue basis (i.e., the lessor is paid a given percentage of the freight charges applicable to and derived from the transportation service provided), an additional adjustment for increased fuel costs nevertheless may be required. An owner-operator should not, in our judgment, be required to absorb any part of the dramatic increases in fuel costs that have occurred since May 15, 1973. Where the base amount of compensation (the percentage of revenue unadjusted for increased fuel costs) plus the amount of the percentage surcharge obtained by the carrier, and passed through to the lessor, pursuant to the special permission procedures are not adequate to compensate the lessor for his actual increased fuel costs, an additional reimbursement must be paid the lessor by the carrier-lessor pursuant to the rule we here adopt.⁵ By the same token, where the amount of the percentage surcharge obtained by a motor common carrier, and passed through to the lessor, under the special permission procedures adequately compensates the owner-operator for the increased fuel costs expressed by him, the fuel-adjustment rule we here promulgate contemplates that no additional compensation need be paid by the carrier to the lessor on the basis of this rule. This relatively minor revision in the substance of the proposed regulation should, for a time at least, alleviate many of the concerns expressed by certain of the carrier respondents as to the paperwork burdens confronting both them and their equipment lessors, without detracting significantly from the principal thrust of this proceeding—the reimbursement of the owner-operator for his increased fuel costs.

⁵ In that event, the carrier can seek to obtain appropriate rate increases in accordance with our standard tariff-filing procedures.

We might add at this juncture that an alternative system of compensating owner-operators, proffered by Cartwright Van Lines, Inc., is deserving of further consideration. Although we do not envision it as presently having sufficient merit as would constitute it a viable alternative to the rule adopted herein, it would seem to have several distinct and worthwhile advantages, especially with respect to fuel adjustments to be made in the future pursuant to procedures authorized by Special Permission Order No. 74-2525. In essence, Cartwright's suggestion is that fuel cost data, which by law it (and presumably most, if not all, other regulated carriers) presently must supply on a monthly or quarterly basis to various State regulatory bodies, might serve as a factual basis against which the impact of fuel price increases might be assessed. Percentage increases or decreases based upon such actual fuel-purchase data might well be utilized by this Commission in establishing future guidelines for fuel-cost adjustments. Therefore, the proposal will be given further study in that connection by this Commission.

Another point should be explained with respect to the proposed rule and the application of it to those situations in which equipment lessors are compensated by the percentage-of-revenue method. It has come to our attention that carrier-lessees at times fail to allow owner-operators to examine their extended freight bills (an extended freight bill reveals the gross weight of the shipment multiplied by the applicable rate of rates for the commodities involved). Were we to allow this practice to continue, many equipment owners may be improperly deprived not only of their full base compensation but also of the benefits intended to be given them by the modification proposed in this proceeding. Thus, we wish to make it clear that an opportunity on the part of lessors to examine, as a matter of right, the extended freight bills is inherent in and indispensable to faithful compliance by carrier-lessees with the rule adopted herein, whenever the lease agreement provides for compensation based on a percentage of the revenue. In those instances where shipment weights or rates are not immediately determinable, or where rating and billing are performed elsewhere than the point of origin or destination of the lease operation, reasonable opportunity must be accorded to carrier-lessees to obtain sufficient information, compute the changes, and to perform the billing function.

Increased expenses for equipment lessees.—Several respondents and carrier associations aver that the administrative and other cost burdens that would be generated by the adoption of the proposed rule ought not be borne fully by carrier-lessees. They say that the clerical and other expenses resulting from application of the considered regulation will have to be recovered if the efficient and economical operations of carriers are to be sustained.

The proposed rule is designed to adjust compensation for leased equipment to reflect increased fuel costs. We are not persuaded that the arguments advanced in certain of the comments—such as that more time, clerical help, stationery, and the like will be needed—represent sufficient justification for reducing the compensation paid by the carrier-lessees to the equipment suppliers. Such arguments over look three significant facts. The first is that because actual fuel costs are inescapable expenses in transportation, attention therefore must be given to efficiency of operation in order to hold such costs in line. Lessees, not lessors, control the operations and the level of that control determines the carriers' relative operational efficiency. The second point is that clerical and other costs would continue under the proposed rule to remain under the control of the lessees rather than the lessors. The ability to eliminate unnecessary cost burdens would rest with the lessees and, thus, the suggested apportioning of those costs between lessors and lessees would run counter to sound business practices. And third, carrier expenses—reduced to the fullest extent possible by managerial skills—must be passed on to the users of transportation rather than in the direction of those who participate in its provision. To do otherwise would leave the equipment lessors in the totally untenable position of having to pay rising fuel prices without any opportunity to recover the higher costs from those who employ their equipment and services. The eventual result, as illustrated in the recent past, would be that the independent trucker—a recognized small businessman—is forced out of the business and all segments of the public suffer.

Arguments to the effect that adoption of the proposed modification will interfere with the financial stability of certain carrier-lessees appear to have little merit. This is because carriers are free, but are not required, to lease equipment. Moreover, the situation, as we foresee it, is not unlike those in the past in which carriers have had to face many other increases in their operating costs. Meeting payrolls, for example, which continue to represent a higher proportion of the expense dollar

as compared to fuel costs, has presented no insurmountable problems for most carriers when new labor contracts call for increased wages and fringe benefits. In addition, the expedited procedures for filing for rate surcharges to reflect increased fuel costs (even though, as stated by certain carrier respondents here, those surcharges involve additional clerical and other expenses to the carrier which may not be recouped thereunder) would appear generally, although certainly not in all instances, to provide carriers with a means for quickly restoring a measure of normality to their respective cash-flow patterns. Faithful compliance with this Commission's existing credit regulations (49 CFR Part 1322) and use of the expedited surcharge as well as our standard rate increase procedures undoubtedly would place carriers in a reasonably tolerable situation during this critical period of time.

Settlement of disputes and enforcement difficulties.—The rule of reason should apply to the settlement of disputes over compensation to be paid for leased equipment. Owner-operators' claims for funds should be handled in the fashion that normally has prevailed in the past. Carrier-lessees should not be allowed improperly to withhold compensation including surcharges and fuel-cost adjustment amounts. Except where prevailing practices have been otherwise, settlement should reflect closely the time required in the past for settling accounts, the time within which the carrier-lessee receives payment of its charge from shippers and receivers (in compliance with existing credit regulations), and a reasonable but short period of time for allowing computation to be made and other administrative functions to be performed.

Enforcement difficulties do not appear to be insurmountable. Complaints of owner-operators will of course, reflect upon the fitness of carrier-lessees to the extent that they prove to be valid. Some of the other avenues available to enforce strict compliance with the regulations adopted in this proceeding include inspection of or reference to such things as: (a) carriers' accounts and records, including copies of fuel purchase receipts and equipment leases; (b) drivers' daily logs; (c) information developed in investigations of fuel-pricing by the Internal Revenue Service; (d) data compiled by the Cost of Living Council; (e) records of State ports of entry and other State departments or agencies responsible for the collection of fuel taxes; and (f) records of other carriers for fuel purchases at specific vending points.

In the event of abusive practices on the part of lessors of equipment over whom we have no direct regulatory authority, no new problems of an insurmountable nature are foreseen. This Commission will continue to require lessees whom we regulate to have the responsibility to audit their cost data which may be filed with this Commission to support proposed rate increases. And, as noted earlier, carriers would seem to have sufficient economic motivation to question bills submitted to them for seemingly inflated fuel costs.

Exemptions.—The Household Goods Carriers' Bureau and Movers' & Warehousemen's Association of America, Inc., ask, on behalf of their members, that because of the unique status of owner-operators in the field of household goods transportation the proposed rule should not be applied to movers. They point out that present regulations contain special provisions recognizing the peculiarities of operations of household goods carriers and that these latter peculiarities, coupled with the asserted fact that independent owner-operators now share increased revenue which will be adequate to meet rising fuel costs, justify so limiting the application of the proposed rule.

To the extent that these arguments are based on rate increases that have been filed since May 15, 1973, they are not unlike those of other respondents participating in this proceeding. They have been taken fully into account in drafting the regulation here finally adopted. We must disagree, however, with the movers' contention that the peculiarities of their operations warrant an exemption. It is true, of course, that movers of household goods do provide a unique type of service. But many other specialized carriers do also. These carriers' unique character does not extend to fuel consumption and the price of fuel recently has risen sharply. This would appear to have placed all owner-operators in an inequitable position. Inasmuch as righting this inequity is the basic thrust of the rule adopted herein, the movers' request for exclusion is denied.

We also find without merit the request by National Automobile Transporters Association for a specific provision stating that the proposed rule does not apply when the terms of leases are mutually agreed upon and when owner-operators are not involved. The sought relief would appear to add yet a further complication to the regulation adopted herein without serving any real purpose. Previous

decisions of this Commission have recognized that automobile transporters experience wide fluctuations in traffic throughout the year; that such carriers have found it advantageous to meet these fluctuating requirements by leasing equipment with drivers from other such motor carriers; and that this practice keeps experienced driver personnel busy during slack periods and aids the carriers in meeting peak service demands which vary among carriers. *Lease and Interchange of Vehicles by Motor Carriers*. 64 M.C.C. 361, 370 (1955). Thus, the fuel-cost adjustments provided for in the rule adopted herein will tend to even themselves out among the carriers and no need appears for the requested exemptions.

Effective and termination dates.—We earlier observed that Public Law 93-249 calls for the order entered herein to be "made effective not later than February 15, 1974." Accordingly, all transportation provided on and after that date with leased equipment by motor common and contract carriers of property subject to part II of the Interstate Commerce Act should be governed by our lease and interchange regulations as modified in this proceeding. And all compensation paid by carriers for leased equipment operated on and after that date should be increased in accordance therewith. This will preclude the possibility of any retroactive effect being given the adopted regulation, as feared by a number of those submitting comments in this proceeding. At this time we foresee no need for further legislative action to either expressly adopt the regulation herein promulgated or to bar judicial review thereof, as suggested by PROD, an organization of independent truckers.

Several participants in this proceeding urge that any regulation adopted herein should have a fixed termination date. It ought to be noted here that the special energy procedures for the filing of fuel-cost rate increases in the form of percentage surcharges reflect, with respect to motor common carriers, a change in this Commission's position on the matter of termination dates. Moreover, the notice and order instituting this proceeding clearly indicates that present information points to the fact that the energy shortage is, in all likelihood, an ongoing problem. Arbitrarily selecting a termination date would therefore serve no valid purpose at this time. Furthermore, the fuel adjustment proposed is closely allied to the special permission procedures now available to carriers. Inasmuch as the regulations governing the lease of equipment and the special permission order are subject to our further order, no termination date need be fixed at this time for the proposed modification.

Environmental impact.—One of the points raised by Wilson Freight Company in its representation is that adoption of the proposed rule will have an adverse impact upon the quality of the human environment if the fuel surcharge is not provided as an alternative for changing lease rental obligations. Wilson's position is based on the assumption that collective bargaining agreements in all probability will have to be renegotiated and that this is likely to cause transportation to be disrupted on a broader scale than has been the case to date. The result, it says, will have an adverse economical and environmental impact.

We cannot agree with Wilson's argument. Rather, we share the view expressed by the Bureau of Enforcement that adoption of the proposed rule, or a modified version of it, should prove to have a favorable, though insignificant, impact upon the quality of the environment. Leasing of equipment by regulated motor carriers long has provided the industry with a flexible capability that has contributed not only to the industry's ability to respond to changing public needs, but also to reduce transportation capacity during periods of reduced demand. The proposed rule is intended to serve the interests of equipment lessees so that this transportation resource will be preserved and the efficiencies and economies inherent in it will continue to be available for public benefit. Rather than being disruptive of transportation service and commerce, our announcement of a proposed rule requiring an adjustment in compensation to reflect increased fuel costs contributed at least in part to the resumption of motor transportation earlier this month. Accordingly, we conclude that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

CONCLUSION

Based on the foregoing discussion we are persuaded that adoption of a modification in our regulations governing the lease of equipment so as to provide for an appropriate fuel adjustment is required at this time. The numerous and vigorous comments submitted in this proceeding by all interested parties, coupled with the

many interrelated considerations we have touched upon in this order, convince us that some rephrasing of the proposed regulation is necessary in order to remedy what is today an inequitable situation without at the same time creating or causing further inequities in our national system of transportation. Accordingly, the proposed rule will be rephrased to read as set forth in the ordering paragraph below.

Wherefore and good cause appearing therefor:

It is ordered, That part 1057 of Subchapter A to Chapter X, of Title 49 of the Code of Federal Regulations be, and it is hereby, modified by adding the following new sentences at the end of subsection 1057.4(a)(5):

Subject to the exemption provisions of subsection 1057.4(a)(3)(i), and except to the extent that amounts paid for the same operations to the lessor in the form of specific fuel cost adjustments pursuant to the provisions of the Interstate Commerce Commission's Special Permission Order No. 74-2525, entered February 7, 1974, and modified February 8, 1974, or designated surcharge procedures, compensation paid by the lessee shall, on and after February 15, 1974, be increased by an amount equal to the increased costs of fuel purchased at lawful prices and borne by the lessor, provided the lessor is responsible for supplying the fuel consumed in operations conducted under the lease. The amount of such increase shall be: (i) added to the compensation paid the lessor for the leased equipment; and (ii) computed by: (A) subtracting from the lawful prices actually paid or to be paid by the lessor (and authenticated by him by presentation to the lessee of valid receipts for fuel actually purchased) and consumed in the operations for which the equipment is leased, the lawful price paid by the lessor of the same type of fuel in effect on May 15, 1973, provided fuel was purchased by him on that date; and (B) reducing such difference by any amounts as are paid for the same operations to the lessor in the form of specific fuel-cost adjustments resulting from increases in the carriers' rates or charges obtained subsequent to May 15, 1973. In the event fuel was not purchased by the lessor on May 15, 1973, the purchase date to be used in lieu thereof for the computations required in (ii) above shall be: (a) the date of the purchase of fuel last preceding May 15, 1973; or, (b) if the equipment was first leased on a date subsequent to May 15, 1973, the date of the lessor's first purchase of fuel for operations conducted under a leasing arrangement.

It is further ordered, That all motor common and contract carriers subject to part II of the Interstate Commerce Act, respondents herein, be, and they are hereby, notified and required to modify their contracts, leases, or other arrangements pertaining to the lease of equipment so as to conform them to the regulations adopted above.

It is further ordered, That the rules herein prescribed be, and they are hereby, prescribed to become effective on February 15, 1974, and will apply on all leases of equipment as set forth therein on and after the said effective date.

And it is further ordered, That this proceeding be, and it is hereby, discontinued. (Authority: 49 Stat. 543, as amended, and 70 Stat. 983)

By the Commission.

(SEAL)

ROBERT L. OSWALD,
Secretary.

APPENDIX

The names of those who filed representations in this proceeding are listed below. Names indented are those of participants who filed joint statements with parties listed immediately above them.

Acc Lines, Inc.	Denver Southwest Express, Inc.
Decker Truck Line, Inc.	Hilt Truck Line, Inc.
Machinery Haulers Association	Huston Truck Line, Inc.
Mallinger Truck Line, Inc.	Independent Transportation, Inc.
Mid Seven Transportation Company, Inc.	Interstate Contract Carrier Corporation
The Mickow Corporation	Jay Lines, Inc.
Umthun Trucking Co.	Jo/Kel, Inc.
Alleghany Corporation, doing business as Jones Motor, Alterman Transport Lines, Inc., American Transport, Inc.	Monsen Trucking Co.
Boat Transit, Inc.	National Carriers, Inc.
Columbine Carriers, Inc.	National Trailer Convoy, Inc.
Condor Contract Carriers, Inc.	Unzicker Trucking, Inc.
Continental Contract Carrier Corp.	W. J. Digby, Inc.
Curtis, Inc.	American Trucking Associations, Inc.
	Arkansas Best Freight System, Inc.
	Associated Transport, Inc.

- Gateway Transportation Co., Inc.
 Hennis Freight Lines, Inc.
 Johnson Bros. Truckers, Inc.
 Mason and Dixon Lines, Inc.
 McLean Trucking Company
 Ryder Truck Lines, Inc.
 Arrow Truck Lines, Inc.
 Baggett Transportation Company
 Belford Trucking Co., Inc.
 Bray Lines, Incorporated
 Bureau of Enforcement, Interstate Commerce Commission
 Cartwright Van Lines, Inc.
 Common Carrier Conference—Irregular-Route
 Caravan Refrigerated Cargo, Inc.
 Certain-Teed Products Corporation
 C & H Transportation Co., Inc.
 F-B Truck Line Co.
 Ligon Specialized Hauler, Inc.
 Miller Transfer & Rigging Co.
 E. L. Murphy Trucking Co.
 Belger Cartage Service, Inc.
 Hunt Transportation
 Underwood Machinery Transport, Inc.
 Diamond Transportation
 International Transport, Inc.
 Ace Lines, Inc.
 Wales Transportation, Inc.
 Warren Transportation, Inc.
 Interstate Contract Carrier
 Eck Miller Transportation Corporation
 Home Transportation Company
 A. J. Metler Hauling & Rigging, Inc.
 Superior Trucking Co., Inc.
 Artim Transportation System, Inc., Operator of the Glenn Cartage Company
 R. J. Jeffries Trucking Co., Inc.
 Parkhill Truck Company
 Colonial Refrigerated Transportation Inc.
 Colonial Fast Freight Lines, Inc.
 Central Transport, Inc.
 Quality Carriers, Inc.
 Beaver Transport, Co.
 Subler Transfer, Inc.
 Coldway Food Express, Inc.
 Riggs Food Express, Inc.
 Truck Transport, Inc.
 Henry Zellmer
 Orbit Transport, Inc.
 Norbet Trucking Corp.
 Winston Carriers, Inc.
 Emprise Trucking Inc.
 Interstate Roadrunner, Inc.
 Lott Motor Lines, Inc.
 Fredonia Express, Inc.
 Gregory Heavy Haulers, Inc.
 Colorado Meat Dealers Association
 Contract Carrier Conference
 Crete Carrier Corp.
 Daily Express, Inc.
 Shaffer Trucking Inc.
 Deaton, Inc.
 Eagle Motor Lines, Inc.
 Eagle Trucking Company
 Eazor Express
 Frozen Food Express, Inc.
 Hahn Truck Line, Inc.
 Heavy-Specialized Carriers Conference
 Household Goods Carriers' Bureau
 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers
 Interstate Motor Freight System
 Brada Miller Freight System, Inc.
 Kraft Foods Division of Kraftco Corporation
 Leonard Bros. Trucking Co., Inc.
 Lightning Express, Inc.
 Augie Passieu Trucking, Inc.
 B & P Motor Express, Inc.
 Blairsville Transport, Inc.
 Bond Transport, Inc.
 Carroll Transport, Inc.
 Ed Werner-Donaldson Transfer & Storage Co.
 Edward W. Chadderton t/d/b/a
 Ed Chadderton Trucking
 H. L. Draper Trucking, Inc.
 J. Miller Express, Inc.
 John F. Scott Company
 Peerless Transport Corp.
 Robert Cole Trucking Company
 Standard Motor Freight, Inc.
 Suwak Trucking Company
 Werner Continental, Inc.
 W. S. Thomas Transfer, Inc.
 Midwest Emery Freight Systems, Inc.
 Midwestern Dist. Inc.
 Movers' & Warehousemen's Association of America, Inc.
 Movers Round Table
 National Automobile Transporters Association
 National Industrial Traffic League
 National Steel Carriers Association
 National Tank Truck Carriers, Inc.
 Prod, Inc.
 Prunty Motor Express, Inc.
 Case Driveway, Inc.
 Red Ball, Inc.
 Refrigerated Transport, Co., Inc.
 Clay Hyder Trucking Lines, Inc.
 Florida Refrigerated Service, Inc.
 Hurliman Trucking Company, Inc.
 J&M Transportation Co., Inc.
 Watkins-Carolina Express, Inc.
 Watkins Motor Lines, Inc.
 Steel Carriers Conference, Inc.
 Steel Carriers Tariff Association, Inc.
 Swift & Company
 Tower Lines, Inc.
 Trans-Cold Express, Inc.
 Wilson Freight Company

Mr. DINGELL. The Chair now notices there is a call to the floor of the House, and the committee will adjourn until 2 o'clock.

I see some of the people from DOT are here, and we would ask that some of these people from the Department be here for questions at 2 o'clock.

The Chair also requests that witnesses from the Department of Justice be here for questions.

Mrs. Brown, it is a pleasure to have you here before the committee. You have all testified well in light of the situation in which you find yourselves.

The committee stands adjourned until 2 o'clock.

[Whereupon, at 12:25 p.m. the committee recessed, to reconvene at 2 p.m., the same day.]

AFTER RECESS

[The committee reconvened at 2 p.m., Hon. John D. Dingell presiding.]

Mr. DINGELL. The committee will come to order.

This is a continuation of the consideration of the energy problems relating to House Joint Resolution 893, considered by the committee this morning.

The committee stood in recess earlier in the day, at which time it was the intention of the Chair to hear testimony of representatives of the Department of Transportation and also the Department of Justice regarding the subject matter of House Joint Resolution 893—matters related to the independent truckers' strike.

Our witnesses this afternoon are Mr. John Snow, Deputy Assistant Secretary for Policy, Plans, and International Affairs, and Ray Chambers, Director of Congressional Relations, for the Department of Transportation.

Gentlemen, if you will identify yourselves for purposes of the record the committee will be pleased to receive your testimony. You will please advise us whether there is anyone else in the room you would like present at the committee table with you.

The Chair does announce that this is an open session and if any of our young people would like to stay and hear the testimony, they are very welcome.

STATEMENT OF JOHN W. SNOW, DEPUTY ASSISTANT SECRETARY FOR POLICY, PLANS, AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY RAY CHAMBERS, DIRECTOR, OFFICE OF CONGRESSIONAL RELATIONS, DOT

Mr. Snow. Thank you, Mr. Chairman.

My name is John Snow, Deputy Assistant Secretary for Policy, Plans, and International Affairs at the Department of Transportation and with me is Ray Chambers, Director of the Office of Congressional Relations.

Mr. Chairman, members of the committee, thank you for this opportunity to appear before you today.

While I do not have a prepared statement, I would like to offer some brief comments to indicate why the administration proposed the joint

resolution and what we think it will accomplish. I hope that my comments will serve to clarify our intent and put the joint resolution in its proper perspective.

This morning Chairman Staggers indicated his concern that the committee and the Congress not respond because a gun is at your head.

We share those sentiments completely. Let me make it perfectly clear that the proposed joint resolution transmitted to the Congress by the Department of Transportation yesterday morning was submitted because we believe that it is necessary on its own merits to redress a real and genuine inequity in the transportation industry.

The joint resolution was not developed as a negotiating tool, nor was it proposed as a negotiating tool in an effort to bring an end to the current truckers strike and shutdown.

The question of the owner-operators' economic situation has been under inquiry at the Department of Transportation for some time. The Secretary, the Under Secretary, Assistant Secretary Binder, and I, individually and together have met with any number of representatives of the owner-operator industry and we have conducted analyses of their contentions as to what is wrong in the transportation system as it relates to them.

As you know, this issue has been under inquiry at the Interstate Commerce Commission and this committee has had it under consideration and we at the Department have also been trying to determine the nature of the problem and how to meet it.

The resolution has not been proposed as a negotiating instrument or tool. It has been proposed because we believe it is a sensible and sound method of meeting the situation. We believe the truckers will recognize this. As they gain an understanding of what the administration and Congress is doing, we believe they will appreciate that the Government is moving effectively to meet their problems.

While we sympathize with their plight, we cannot in any way condone unlawful behavior.

Mr. Chairman, I would like to briefly review some of the facts about the owner-operators' situations. The energy shortage which this country is experiencing, along with several governmental responses to that problem, I have in mind particularly the 55-mile-per-hour mandatory speed limit, have created a particularly acute problem for an important portion of the trucking industry, the owner-operators.

Owner-operators own their trucks which they lease to trucking companies, usually regulated trucking concerns. The compensation of the owner-operator is normally established in a lease agreement between the owner-operator and the regulated trucking company. ICC regulations require that a lease agreement have a term of at least 30 days and many have a term of 30 days and beyond. Under the lease agreement, the owner-operators' compensation is generally fixed in terms of some proportion of the total revenues received by the regulated trucking company, normally 75 to 80 percent of the total revenues.

Many owner-operators today find themselves in an extremely vulnerable financial position and face the real prospect of foreclosure on an asset that is dear to them, sometimes their major asset—their truck.

This is so because their productivity has fallen off while the cost of operating, fuel, and other costs, have been rising substantially. Owner-operators are not regulated by the ICC. They cannot file for rate increases by the ICC but they must depend on the regulated carriers to file for such increases.

Despite the fact that the Commission has taken action to ease the ability of the regulated carriers to file for these increases and thereby reimburse the owner-operators for their fuel cost increases, the regulated carriers, for competitive reasons, apparently, have been reluctant to file for such increases.

Let me recount the actions which the Commission has taken.

In December 1973 the Commission sought to ease the ability of regulated carriers to reimburse owner-operators for the increased fuel costs they had experienced. They did this by shortening the notice period of from 35 to 40 days to 10 days.

In January 1974, the Commission acted again to meet the problem by clarifying its intent that revenues received by regulated carriers as a consequence of increasing rates pursuant to the December order were to be passed on to the owner-operators.

As I have noted it is unfortunate that these efforts have not relieved in any major degree the owner-operators' problems because of the fact that relatively few regulated carriers have filed for increases.

On January 30, 1974, the Commission again sought to meet this problem. This time it took a different tack. It revised the leasing regulations to require the regulated carriers to reimburse owner-operators for all fuel costs beyond the level of May 15, 1973. It did so in the docket which is the subject of the joint resolution (MC-43 (Sub-No. 2)).

The order provided for a 20-day comment period compared to the usual 30-day comment for such orders.

It appears, however, by virtue of section 221(b) of the Interstate Commerce Act that the Commission is precluded from making its order in this proceeding final in less than 30 days after the 20-day comment period expires.

Thus the order in MC-43 (Sub-No. 2) cannot be put in effect until March 20, 1974, at the earliest. As a matter of fact, it probably would not be effectuated until some time in early April.

The Commission's inability to effectuate its final order more promptly, we believe, will cause substantial hardship to the owner-operator and, as a consequence, to the shipping and consuming public. Owner-operators represent a large and vital part of the trucking industry and their present financial situation poses a serious threat to the commerce and well-being of the Nation.

The Commission's proposal in MC-43 (Sub-No. 2) for reimbursing owner-operators for fuel cost increases offers a sound approach to this particular problem, at least insofar as it deals with the owner-operators serving regulated carriers.

To meet the immediate problem, however, the Commission's order should be made effective promptly and that, Mr. Chairman, is the purpose of the joint resolution.

The joint resolution proposed by the Department, as acted upon by the Senate, has been modified slightly and we have no exception

to the modifications which the Senate made in the proposal we submitted.

Thank you.

Mr. DINGELL. The Chair recognizes Mr. Kuykendall.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

It was the obvious intent of the January ICC action that action be taken by the regulated carrier to make his subcontractor whole, is that not correct?

Mr. SNOW. That is precisely the case, Mr. Kuykendall.

Mr. KUYKENDALL. Now, it's been obvious from the statements of Chairman Stafford and from you, Mr. Snow, that this action simply did not take place on the level that would have been necessary to make the subcontractor whole. Why wasn't this action taken?

Mr. SNOW. The only explanation I have is that the regulated trucking companies, for competitive reasons, found it to their advantage not to file for the increases on the expedited basis which the Commission provided.

The burden of the increased costs and the loss of productivity was being visited on the owner-operators and, therefore, the regulated carrier did not have much incentive to raise rates.

Mr. KUYKENDALL. The regulated trucking contractors have been accused of taking this opportunity to destroy their independent competition.

Is the independent subcontractor enough of a necessity to this industry to make this kind of action on the part of the regulated trucker suicidal?

Mr. SNOW. If that action is being taken, I would say it would be very disastrous to the welfare of the national transportation system.

Mr. KUYKENDALL. Because you feel that his independent subcontractor is an integral and necessary part of our system?

Mr. SNOW. I do and I believe, if their position were jeopardized, the consuming public would pay in higher transportation rates and reduced service.

Mr. KUYKENDALL. Why are household movers, who are legitimate interstate carriers, afraid of this bill?

Mr. SNOW. I can only suggest that the regulated trucking companies would prefer to avoid raising their rates to pass on revenues to the owner-operators.

Mr. KUYKENDALL. You think they would admit that?

Mr. SNOW. I doubt that they would.

Mr. KUYKENDALL. I don't think so either. That is why those who are calling won't say why I should vote against the bill.

Mr. SNOW. I think the owner-operators are subject to an inequity because they are bound by the lease agreement.

The costs of the productivity loss are being visited on them and they have no recourse.

Mr. KUYKENDALL. I have two more subjects. I believe you said that of this legislation, no part and no promise thereof is included in any negotiations with any truckers, is that correct?

Mr. SNOW. That is absolutely correct.

Mr. KUYKENDALL. So even though it might well appear to the public that this legislation is being directed at gunpoint, but it is actually not any material part of any negotiation.

Mr. SNOW. It is entirely independent. I think it might be useful if I outlined how this proposal came about.

Mr. Barnum, the Under Secretary, and I met with Mr. Binder, the Assistant Secretary, on this Saturday past, at which time we reviewed the problems of the owner-operators and sought to discern what actions the Federal Government could take to meet what we felt were legitimate grievances. At the end of that meeting I went to my office and conducted further analysis.

On Sunday morning at approximately 10 o'clock I received a call from Mr. Barnum, who asked, "What have you come up with?"

I said, "Mr. Barnum, the action I propose is to make the Commission's order in MC-43 effective promptly because I think it is a well-conceived decision which offers needed relief."

He said, "How can we do that?" I said, "It will require legislation, in my view, because of the 30-day rule under section 221(b) of the Interstate Commerce Act."

He said, "Draft a proposal and get it to me by 4 o'clock." I drafted it and sent it to him at 4 o'clock that afternoon. To my knowledge that joint resolution had never been discussed with anyone outside of DOT prior to that time. I never discussed it with any owner-operators prior to the time I drafted it, nor did Mr. Barnum.

Mr. KUYKENDALL. You will remember I saw a copy Monday morning.

Mr. SNOW. It was transmitted to the Congress Monday morning.

Mr. KUYKENDALL. Now to clarify—the Justice Department is not always able to initiate action because in most cases it is necessary to have a plaintiff.

Now, what sort of action has DOT requested from Justice on implementing peacekeeping in this matter of the violence? I will ask you first, do you agree that we have enough laws on the books to handle it?

Mr. SNOW. Yes, I do.

Mr. KUYKENDALL. What has DOT done to insist that the Justice Department enforce the Hobbs Act, 18 U.S.C. 1951, for instance?

Mr. SNOW. With respect to the enforcement of the criminal statutes of the United States as they affect transportation and relate to this matter, we have done an analysis of those statutes we think apply. We have discussed those statutes with the Department of Justice and urged that they take action—any appropriate action.

Mr. DINGELL. Will the gentleman yield?

Will you submit to us a copy of the list of the statutes?

Mr. SNOW. I will submit the list of the statutes I think would apply to the allegation of violence. Of course, I can't state as a fact whether any specified alleged actions are in fact occurring.

Mr. DINGELL. The newspapers are full of it. Headline in the Washington Star-News, "Driver Slain."

Mr. SNOW. I will submit our list of the statutes that we think could apply to the situation.

[The following material was received for the record:]

STATUTES WITH POSSIBLE APPLICABILITY TO THE TRUCKERS' STALL-IN SITUATION
PROVIDING CRIMINAL RELIEF

1. 18 U.S.C. § 33 (Destruction of motor vehicles used in interstate commerce, lessening ability of person employed in connection with operation of motor vehicle to perform duties).
2. 18 U.S.C. § 231(3) (Acts which impede performance of duties by police or firemen which are incident to civil disorder which adversely affects movement of commerce; civil disorder requires acts of violence).
3. 18 U.S.C. § 241 (Conspiracy against rights of citizens). This section is the criminal version of 42 U.S.C. § 1985. The right to interstate travel is protected from private conspiracies, as well as State action. *United States v. Guest*, 383 U.S. 745 (1966).
4. 18 U.S.C. § 245(b)(1)(E) (Use of force to interfere with enjoyment of the benefits of programs or activities receiving Federal financial assistance; prosecution must be certified by Attorney General as necessary to secure substantial justice).
5. 18 U.S.C. § 1701 (Obstruction of mail).
6. 15 U.S.C. § 1281 (Injury to property moving in interstate commerce in the possession of a common carrier).

Mr. KUYKENDALL. You said you met with Justice, correct?

Mr. SNOW. Yes, that is correct.

Mr. KUYKENDALL. For the record did you say "met with" or "discussed with," meaning the telephone?

Mr. SNOW. Mr. Kuykendall, I am not sure. This matter was not handled by my office, it was handled by the office of the General Counsel. It is my understanding that the General Counsel's office of the Department of Transportation met with the Criminal Division of the Department of Justice to discuss the enforcement of the applicable statutes.

Mr. KUYKENDALL. Could you describe the attitude in the Department?

Mr. SNOW. We utterly deplore what is happening. I call your your attention to a telegram sent by Claude S. Brinegar, Secretary of Transportation, joined in by Frederick B. Dent, Secretary of Commerce, and Peter J. Brennan, Secretary of Labor, and Mr. William E. Simon from the Federal Energy Administration.

Mr. KUYKENDALL. Whom is it to?

Mr. SNOW. I am sorry, it's to the Governors of the 50 States of the United States. It closes by stating, "Notwithstanding"—I can preface this by saying that the language cited clearly reflects the sentiments of Secretary Brinegar.

Notwithstanding the legitimate concerns, there can be no condoning the incidents of violence which have recently occurred in the trucking industry. The irresponsible actions of a militant few have, we fear, been magnified in the amount of work stoppages in the industry. Many responsible truckers who would otherwise have returned to the road have shown understandable reluctance to operate in the face of such danger. We would again urge you—the Governors—to take all necessary and appropriate actions to deter and confront such unlawful actions.

On behalf of the Federal Government, the Attorney General will investigate all alleged violations of Federal statutes and will prosecute where appropriate.

He joins us in urging you to maintain order and safety on the Nation's highways.

Mr. KUYKENDALL. Did he sign that?

Mr. SNOW. He didn't sign this, but yesterday the Attorney General made public his sentiments on this subject.

Mr. KUYKENDALL. I yield back the balance of my time.

Mr. DINGELL. The Chair recognizes Mr. Murphy.

Mr. MURPHY. I have no questions at this time.

Mr. DINGELL. The gentleman from New York?

Mr. HASTINGS. At this time I have no questions.

Mr. DINGELL. The Chair recognizes the gentleman from Texas. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Snow, about how many subcontracting truckers would be affected by this action; about how many are there in all?

Mr. SNOW. Mr. Eckhardt, our evidence indicates there is something on the order of 100,000 to 150,000 vehicles operated by owner-operators.

Mr. ECKHARDT. Do you have any estimate as to how many vehicles to the owner-operator, does that mean one per owner-operator?

Mr. SNOW. Most owner-operators have a single vehicle. There are some who have several vehicles. We have not found any substantial number which have a fleet of vehicles. The typical situation is an owner-operator who owns a vehicle which he operates exempt one way and which he leases under a lease agreement pursuant to the Commission's regulations on the backhaul. I would say that whereas there are perhaps 140,000 or 150,000 vehicles, there may be 110,000 or 120,000 owner-operators as such.

Mr. ECKHARDT. You have 110,000 entities, each of which could make a contention that in the purchase of gasoline that he had paid in excess of that amount charged on May 15, 1973, and was entitled by virtue of that payment to additional compensation from the related carrier. You would have that many possibilities?

Mr. SNOW. Yes, if there is a lease agreement in effect. The Commission's agreement reads prospectively, it's from the date the order takes effect.

Mr. ECKHARDT. I understand that. But the date from which you calculate the overcharge, or at least a charge that may be made over against the common carrier, is, I believe, May 15, 1973.

Mr. SNOW. Yes.

Mr. ECKHARDT. Now that means that in order for this to be a just charge and in order for it to be just for the public to have ultimately to absorb it, I understand you do anticipate permitting the regulated carrier to add it?

Mr. SNOW. Absolutely.

Mr. ECKHARDT. You would have to be assured that the claims of 110,000 men with respect to the purchase of diesel fuel were actually valid claims?

Mr. SNOW. That is correct.

Mr. ECKHARDT. Now, of course, if you are dealing with a large regulated carrier who himself purchases gasoline through his agents, through his employees, I would assume there are ways in which you may be assured that the claim of purchase is a valid one.

For instance, you can determine the number of miles that the truck was operated and you can determine about the amount of diesel fuel that was used and at least you can make a reasonable check on whether or not claims with respect to expenses for fuel were in fact paid, can you not?

Mr. SNOW. Yes, I think you can.

Mr. DINGELL. The Chair apologizes to the gentleman from Texas, but there is a quorum call going on the floor. The Chair wonders what the pleasure of the committee is.

Without objection the Chair will declare a recess so that the members may answer to their names in the quorum call now pending.

Before we do, the Chair advises that the Chair and a number of members of the committee are not pleased that the Department of Justice is not here to give us testimony on this matter. The Department of Justice says they are unable to get a witness on such short notice. They have people out in the field who would be competent to testify. The Chair advises that is not satisfactory and we will discuss whether Justice is going to come, as I am not prepared to vote on a bill of this kind without knowing what Justice is doing to enforce the criminal laws of the United States.

The committee will be in recess for approximately 10 minutes while the Members answer the quorum call on the floor. [Brief recess.]

Mr. ECKHARDT (presiding). The committee will come to order.

Mr. SNOW, you answered some questions I was asking. I believe you had stated there are about 110,000 contractors at the present time.

If this regulation went into effect, would there be any incentive whatsoever for a contract carrier to purchase diesel fuel at a low rate as opposed to a higher rate?

Mr. SNOW. Well, insofar as he could pass the rate on through to his regulated carrier, no, but the Interstate Commerce Commission is obligated to audit the accounts of all carriers, particularly in connection with rate increases, to make sure that the rate increases are based on just and reasonable and honest costs so that an owner-operator which falsified its costs—

Mr. ECKHARDT. I am not talking about falsifying.

Mr. SNOW. Or through neglect or negligence or whatever, payed prices for gasoline that were not market justified. I am sure the Commission would find that improper and would roll back the increases.

Mr. ECKHARDT. How could you do that? You have a regulated carrier with perhaps—what would you say, maybe a hundred?

Mr. SNOW. It could well be in the case of the steel-hauling industry where a very large proportion of the freight is handled by owner-operators. So it could be even more.

Mr. ECKHARDT. John Smith drives a truck. He picks up his gasoline and diesel fuel at some given place, he produces his receipt. His receipts are not inordinately high but the rates seem to exceed that which existed before perhaps by 5 or 10 percent.

Now how in the world do you get down to all of these cases and take care of the proposition that the expenses have gone up, but not inordinately? How do you ever check that?

Mr. SNOW. Mr. Eckhardt, I think the answer there where the case is not flagrant, where it is not a blatantly false price, is that the Department of Transportation, for instance, right today is auditing truck stop operations and we have through our survey sample a good fix on what should be charged.

The Commission itself could institute a similar procedure. So the market price on diesel fuel is well known. The statistical error on it

I think is minimal and I think we have a good fix on that so if an owner-operator consistently reports paying prices at 5 or 10 percent above, say, the market rate, I think it would become known.

Mr. ECKHARDT. What is the market price of diesel fuel?

Mr. SNOW. 46 cents.

Mr. ECKHARDT. How much does it vary up and down from that point?

Mr. SNOW. Let me give you some figures. This is our latest status report on this.

Mr. KUYKENDALL. Would the Chair yield?

Mr. ECKHARDT. Yes.

Mr. SNOW. We have Alabama 49.6 cents, Arkansas 51.1, Maine 43.3, your State of Texas 45.7.

Mr. ECKHARDT. Well, at any rate you show a pretty good range there.

Mr. SNOW. We show a range of the low 40's to lower 50's.

Mr. ECKHARDT. At 10 cents, right?

Would you like me to yield at this point?

Mr. KUYKENDALL. May I get this clear for mechanical reasons?

Would the ICC, in dealing with the pass-through to the subcontractor, interpolate everything into percentages?

Mr. SNOW. I think they probably will.

Mr. KUYKENDALL. So you start as a base of—

Mr. SNOW. May 15, 1973.

Mr. KUYKENDALL. At the time of this particular date, there is a flat percentage increase over the base, correct?

Mr. SNOW. That is right. The day the law goes into effect any gasoline you purchase on that day you will be able to pass through that increase over the May 15 price to your regulated carrier.

Mr. KUYKENDALL. I would like to follow the line of questioning of the gentleman from Texas on this point. Is every single subcontractor going to have to have established his own base beginning the day this thing goes into effect?

Mr. SNOW. I am not sure how that will work under the order. I imagine the Commission will use an average price under the order and, if the contractor feels that is not applicable to him, he would probably come forward and suggest a different price.

The truckers have a very sophisticated understanding of their own numbers. They know their base price for May 15, 1973, because in every State in the Union there is a requirement for a fuel tax, a State fuel tax.

That tax is collected whether or not you actually purchase fuel in the State, so the trucker pays a percentage of the fuel price it would have purchased. Thus every trucking company knows the price of fuel it has been paying and knows the tax it has been paying because that tax is collected by every State in the Union on every trip.

Mr. ECKHARDT. Whatever it is, you are not prepared to say which it is, the base that the individual contract carrier paid on May 15, or it could be that which the regulated carrier paid, or it might be an average price established by the Commission, one of the three?

Mr. SNOW. No; I think it would actually be the price, which the owner-operator paid, his base price on May 15, 1973.

Mr. ECKHARDT. I see.

Mr. SNOW. It would be his actual base price. I am saying I believe the trucking companies will know this because every owner-operator, every truck when it goes through a State is given a receipt which reflects the gas price and the tax.

Mr. ECKHARDT. Then since a regulated carrier would be, under these circumstances, responsible for the amount of the increase, he would be motivated to immediately ask for an increase in rate so as to pass it on to the shipper?

Mr. SNOW. Yes; I think that would be correct. That, in fact, is the intent of the order, to create an incentive for the regulated carriers to file for these increases so they will be able to recompense the owner-operator for his expenses.

Mr. ECKHARDT. Then as for the competitive effect in the field with respect to prices, there is no monetary incentive on the contractor nor the regulated carrier to pay less for his fuel, is that correct?

Mr. SNOW. No, I don't think that would be correct.

Mr. ECKHARDT. Isn't it passed on to the consumer?

Mr. SNOW. Yes; but the owner-operator who can operate more efficiently would still benefit. If the owner-operator gets too far out of line with fellow owner-operators, the trucking company is not going to enter into a lease agreement with him.

Mr. ECKHARDT. But then there is no pressure on the part of any truckers with respect to the seller of diesel or gasoline to cause the seller of diesel or gasoline to keep his rates down because, after all, whatever the rates are, they are charged at the same rate to all truckers and they are passed on completely to the shipper and very likely ultimately to the customer. There is no monetary incentive to keep the cost of gas or diesel low, is there?

Mr. SNOW. I wouldn't accept that conclusion.

Mr. ECKHARDT. Why not?

Mr. SNOW. Because, as I indicated, or attempted to indicate earlier, if an individual owner-operator allows his price of gasoline to go very high, above the market, he will quickly lose his ability to obtain leases from the regulated trucking company.

That competitive mechanism would be operating. If I am a regulated trucking company and I am faced with an option of dealing with you, Mr. A, or you, Mr. B, and Mr. A is continually giving me bids for substantially higher fuel rates, I am going to choose Mr. B every time.

Mr. ECKHARDT. I understand that exactly and that is the reason I made the comparison between the competitive position.

Mr. SNOW. I think that would meet the problem.

Mr. ECKHARDT. But there is nothing to prevent the price from gradually marching up with respect to all truckers as far as the market is concerned?

Mr. SNOW. Again, the trucking company, the individual trucking company which can operate more efficiently at a given price which can hold its fuel prices down, will have a competitive advantage in gaining traffic.

Mr. ECKHARDT. But if all diesel goes up it goes up to all trucking concerns, there is really not much skin off the nose of any particular trucking concern under those circumstances.

Mr. SNOW. If all fuel prices went up across the board at the same rate, then the urge to look for the lower price fuel would be less powerful.

Mr. ECKHARDT. The gentleman from Florida.

Mr. FREY. Thank you, Mr. Chairman, I just have one basic question.

I guess the answer is apparent from the testimony. My question concerns the so-called gypsies or unregulated carriers. Do you have any suggestion whatsoever regarding anything we can do to try to help out these carriers? Is there any hold that we have on them as far as this committee is concerned.

Mr. SNOW. I have discussed the plight of the independents, the owner-operators, at great length with them and you would be interested to know from those conversations I have come away with this understanding of their problems. Often they operate exempt one way. They will leave a rural area with grain, or an unregulated commodity and end up in a marketing area like Minneapolis-St. Paul. Their rate on the movement from the rural community to Minneapolis-St. Paul is fixed by market forces.

On that rate they have not been complaining. Market forces have caused the rates which they receive from shippers to rise. There are little if any complaints on that side. Their complaints came from the other side, the regulated side, where they had this lease agreement in effect which was subject to a term and which was producing what they regarded and what we regarded as an equitable result in light of the inflation in fuel costs that they were experiencing.

So the problem is not, to my knowledge, on the exempt side of their movement, it's on the regulated side of their movement.

Mr. KUYKENDALL. Would the gentleman yield?

Mr. FREY. I would be glad to yield.

Mr. KUYKENDALL. Have any of the discussions included the matter of weights as part of a quid pro quo when the totally independent group already has the passthrough privilege? It's my understanding their biggest problem is not the value of fuel but the availability of it as well as speed limits.

Mr. SNOW. I think that is correct.

Mr. KUYKENDALL. What about the discussion of weights with them?

Mr. SNOW. They have expressed uniform preference for increased axle weights and some expressed preference for increased lengths on the Interstate Highway System.

Mr. KUYKENDALL. Has the DOT made any concrete proposals to the proper committees in the House and Senate on this subject in the last few days?

Mr. SNOW. To my knowledge we have not but I can assure you that review of this matter is one of the top items in the Department right now. We have under inquiry the question of what precisely should be done to expand the productivity of the Interstate System, the only system over which we have jurisdiction.

One possible action clearly is to change the present weight limits and to require some change in the law so uniformity will prevail.

Mr. KUYKENDALL. I would like to follow up on the line of questioning of the gentleman from Texas, Mr. Eckhardt, on the matter of incentives.

I think, Mr. Chairman, the marketplace is the best incentive. I think the proof that the marketplace, and a desire to remain competitive, even though we have a fuel crisis, is proven beyond a shadow of a doubt by the fact there were practically no takers on the ICC permissive authority that was granted for this passthrough. Nobody wanted to be the culprit and break the competitive situation.

I agree with the gentleman from Texas, there just aren't any other incentives. I have great faith in competition.

Mr. ECKHARDT. The gentleman from Florida, has he completed?

Mr. FREY. If the gentleman from Tennessee has, I have.

Mr. ECKHARDT. Suppose we take a recess at this time to catch the quorum call?

Mr. SHOUP. If I am the final inquisitor, certainly I think that most of the questions have been asked and I feel that possibly we would gain nothing by asking Mr. Snow to come back, I will yield my time.

Mr. ECKHARDT. If the gentleman will prefer, I will recognize the gentleman from Montana at least until the second bell.

Mr. SHOUP. Thank you, Mr. Chairman.

Mr. Snow, going a little further on what Mr. Kuykendall was speaking on, will you have recommendations and, if so, to standardize and get more—well, to standardize the weights allowable for interstate trucks?

Mr. SNOW. Mr. Shoup, I can't say that we will because that is a matter the Secretary will have to finally act on. I have processed it through my office and a recommendation will be given to him.

Mr. SHOUP. Would it be unfair to ask what your recommendation is?

Mr. SNOW. I think it would be.

Mr. SHOUP. All right, I won't do that.

Mr. SNOW. I can say this, we see genuine merit from the point of view of facilitating the movements of goods and services efficiently in greater uniformity and we see genuine merit from the point of view of productivity and costs.

Mr. SHOUP. Do you agree with what we are referring to in this particular joint resolution as merely a short-term reaction, that certainly it does not address itself to the long term in really solving the problem? It reacts to the concern we have now but in no way will it solve the transportation problems.

Mr. SNOW. Let me answer that two ways, I think first of all it meets a very real problem of the owner-operator who, bound by his leases, is unable to obtain full compensation for his cost increases.

Second, the broader productivity gains and cost reduction, I think would also contribute substantially to improving the situation of the owner-operator.

Mr. SHOUP. How important do you think it is if we move in other fields other than react to this, pass this joint resolution and sit back with a sigh and say, "We have taken care of the problem." Or do you feel it is necessary that we have other action in other areas?

Mr. SNOW. I think its important that Congress consider other measures too.

Mr. SHOUP. Immediately? I will ask you this, what was your reaction to the Secretary's timetable when he made the request to Congress for action?

Mr. SNOW. The recommendation came from him to me for a speedy recommendation. He asked me to act very promptly.

Mr. SHOUP. Thank you, Mr. Chairman, no further questions.

Mr. KUYKENDALL. May I ask that we stand in recess until 4 o'clock.

Mr. ECKHARDT. Without objection we will stand in recess until 4 o'clock.

Thank you Mr. Snow for coming to give us your information.

[Brief recess.]

Mr. ECKHARDT. The committee will resume its session.

We have Mr. Gary H. Baise, Associate Deputy Attorney General. We want to thank you for coming up here with your people on such short notice.

Would you please introduce the people at the table?

STATEMENT OF GARY H. BAISE, ASSOCIATE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY KEVIN MARONEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; ROBERT G. DIXON, JR., ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL; IRVING JAFFE, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION; KEITH CLEARWATERS, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION; AND MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

Mr. BAISE. On my far right is Mr. Jaffe, Acting Assistant Attorney General in charge of the Civil Division. Second to my right is Mr. Keith Clearwaters, Deputy Assistant Attorney General of the Antitrust Division. On my immediate right, Mr. Bob Dixon, Assistant Attorney General in charge of the Office of Legal Counsel, and the young lady at the end of the table is Miss Mary C. Lawton, Deputy Assistant Attorney General from the Office of Legal Counsel. On my left, Mr. Kevin Maroney, Deputy Assistant Attorney General, Criminal Division.

We were unable to find someone from Civil Rights to come up and join us this afternoon, but if it is necessary to add something to the record, this evening or possibly tomorrow morning we will be able to accommodate your desires along these lines.

Mr. ECKHARDT. What has gone forward that brought the question of Justice into the hearing was the consideration of H.J. Res. 893, which would advance the date for final order of the Interstate Commerce Commission in Docket No. MC-43 (Sub-No. 2). Of course, as you well know, this has to do with the matter of passthrough of certain increased diesel fuel costs and gasoline costs with respect to independent contract and trucking concerns who are employed by common carriers.

The questions that arose on this committee related to the question of whether or not Congress should, in effect, operate under the gun, whether the Government of the United States should operate or not in enforcing the law totally with respect to these activities. I don't think there was any indication here that the Government was or was not doing so, but there was at least testimony by the Department of Transportation that the Justice Department had been brought into

the picture through them and that the Justice Department had sent out, at least amongst other activities, notice to the States with respect to the problem and with respect to the various laws which might be violated.

It is my understanding that you have with you persons that would be competent to discuss some of these areas of criminal law that might touch on the allegation of criminal offenses with the question of withholding truck services, the antitrust laws, laws with respect to citizens' radio bands, the Economic Stabilization Act which would, of course, be largely civil, the Hobbs Act, and, as you have stated, you do not have a member for the civil rights laws. But I believe you would be able to describe to us what sort of motion has been put into action by the Justice Department in this area. You may proceed.

Mr. BAISE. Thank you, Mr. Chairman.

If I may put this in context, as a result of some meetings at the White House which started Saturday morning, I returned to the Justice Department Saturday afternoon and started making phone calls to appropriate individuals within the Department to request them to prepare papers, for the perusal of the Attorney General, reviewing of statutes under which they felt the Justice Department might have some jurisdiction in this truckers matter.

We have had the divisions prepare those documents and I would like to start with Mr. Kevin Maroney, who is from the Criminal Division, which has sent out a telegram, as you mentioned earlier, to the U.S. attorneys listing the statutes we suggest they review, and in turn attempting to get intelligence to match up against these statutes.

Mr. MARONEY. Mr. Chairman, may I say first that about the middle of December, when these incidents began to be more prevalent, the Criminal Division requested all U.S. attorneys and the FBI to step up their reporting of incidents occurring in their particular jurisdictions.

The FBI also was requested at that time to increase their liaison with the local law enforcement authorities to insure that the Department would be fully apprised of the situation on a nationwide basis.

As Mr. Baise has just indicated, the Criminal Division, on this last Friday, sent out a teletype to all U.S. attorneys which I could read into the record if the chairman would like.

Mr. ECKHARDT. Yes, will you please.

Mr. MARONEY. It covers some of the criminal provisions which could be involved. The text is as follows:

To: All United States Attorneys.

Yesterday the Attorney General issued the following statement: "I am deeply concerned over the spread of violence on our nation's highways as a result of demonstrations and slowdowns by truck drivers. One death has already been attributed to this violence.

"State and local authorities have the necessary police power to contain and stop such incidents. However, I have spoken with Director Kelley of the FBI and if there appear to be any Federal violations, then the FBI will investigate."

That is the end of the Attorney General's quote.

For your ready reference, penalties for the firearms statute are 18 U.S.C. 922, and the explosives statutes, 18 U.S.C. 844, Chapter 2 of Title 18 regarding "Air-

craft and Motor Vehicles" is limited by the definition of a "motor vehicle" in Section 31, to passenger-carrying vehicles. Section 1281 of Title 15 requires that the damage to cargo being transported by a carrier be wilfully inflicted on the cargo.

The Hobbs Act, 18 U.S.C. 1951, requires a "robbery or extortion."

The TWX from the Department of Justice sent to you on December 12, 1973, suggests an appropriate manner of communicating with the various units of the Department at all times regarding the current situation. As previously requested by the Department of Transportation, the Department of Justice is coordinating with the Department of Transportation those problems of such dimension as to be beyond the capabilities of individual states.

That is the end of the text of the telegram and it is signed by Henry C. Petersen, Assistant Attorney General, Criminal Division.

Yesterday upon direction of the Attorney General, the executive office for U.S. attorneys again sent a communication to all U.S. attorneys expressing the Attorney General's concern over the situation and admonishing the U.S. attorneys to be alert to conditions which are not and cannot be handled by State and local authorities, and to secure the resources of the Federal Bureau of Investigation for prompt investigation of any apparent violations of Federal law.

Now, some of the possible statutes which may come into play in connection with some isolated incidents are mentioned in the telegram and any incidents that do occur which appear to be a violation of the Federal statutes will be vigorously investigated by the FBI, and pursued by the U.S. attorneys.

Mr. BAISE. That is all we have from the Criminal Division. We are willing to entertain questions at this point in that area or, if you wish, we will continue on with each member of the Department outlining the statutes in his area of jurisdiction for your information.

Mr. DINGELL [presiding]. Gentlemen, the committee thanks you for your presence and your testimony. We thank you for your helpful testimony. The committee was somewhat apprehensive that you folks in the Department of Justice were not sufficiently interested in this committee's deliberations to assist us. I am happy to see I was in error in that apprehension.

Gentlemen, would you each outline in connection with your respective branches of the Department of Justice what your departments are doing with regard to this particular matter, if you please.

Mr. BAISE. That is where we were when you came in. We were doing that in the criminal area.

Mr. DINGELL. You have criminal, do you have civil rights? You have your old Ku Klux Klan statutes.

Mr. MARONEY. Section 241.

Mr. DINGELL. You have antitrust statutes. You may have a massive conspiracy to interfere with trade. There is no telling which of the antitrust laws is subject to violation. Let me begin by asking have you forged a task force to go into this? Obviously that is a practice of the Department of Justice.

Mr. BAISE. We asked each division to examine the statutes under his jurisdiction to determine whether there is jurisdiction to move ahead when we get the proper kind of information.

Mr. DINGELL. Do you have an investigative task force at this time?

Mr. BAISE. As Mr. Maroney stated just before you arrived, we requested the FBI to step up its investigation around the country and report all the information to the U.S. Attorneys. If we might, we will

continue with the other individuals from the department, outlining the areas of jurisdiction that we have and what has taken place.

Mr. DINGELL. I think that would be very helpful. I will defer questions until that has been done.

Mr. BAISE. Fine. I mentioned to Mr. Eckhardt before you arrived that we did not have anyone from the Civil Rights Division to discuss section 241, but we think we can cover it with Mr. Dixon. I will move to the civil rights area and let him cover that briefly and then on to antitrust.

Mr. DIXON. Mr Chairman, in the civil rights area, the most obvious relevant statute is title 18, U.S. Code, section 241, referred to as one of the last serving sections of the old Ku Klux Klan Act of the Reconstruction era. It, in short, makes it a crime for two or more persons to conspire to deny to any others a constitutional right.

Section 241 does not define the components of what are constitutional rights, but encompasses the concept broadly. As you know, we have in our judicial interpretation of the Constitution in the last few years developed a concept of a right of travel, interstate travel, and it would appear that if there were a conspiracy with a particularized intent to impair interstate travel, that a prosecution might well lie.

There was a successful case of that sort back in the 1960's, *United States v. Guest*. In addition, there is a new, much longer, relatively untested law, title 18, U.S. Code, section 245, designed to make it a crime to intimidate persons in a variety of numbered civil rights that might, too, be a backstop to 241.

The Attorney General has indicated in press conferences that he wishes to have observers for the department on the scene taking notes or pictures and gathering evidence of any kind that might be helpful to make it possible to successfully charge a violation of statutes like section 241 of title 18 or some subsection of section 245. Beyond that, many other civil rights laws require a showing of State action. They, of course, would not be applicable in this situation. We need no State action, however, for a proceeding under section 241, nor any racial intent.

That is the highlight of that portion of our efforts.

Mr. BAISE. Mr. Chairman, inasmuch as a number of other members of your committee have recently joined us, I would like to reintroduce this panel.

Mr. DINGELL. I think that would be helpful.

Mr. BAISE. On my left is Kevin Maroney, Deputy Assistant Attorney General, Criminal Division. I am Gary Baise, Associate Deputy Attorney General. On my right is Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel; on his right, Keith Clearwaters, Deputy Assistant Attorney General, Antitrust Division. On his right, Mr. Irving Jaffe, Acting Assistant Attorney General, Civil Division. On his right is Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel.

Mr. Clearwaters is in the Antitrust Division and will speak to the matters under his jurisdiction.

Mr. CLEARWATERS. As you indicated, Mr. Chairman, there is an antitrust law that may have some bearing on this matter. The Sherman Act, section 1, provides that combinations and conspiracies to unreasonably restrain trade are a violation of both criminal and civil law.

Mr. SHOUP. Mr. Chairman, I am sorry, I can't hear the witness.

Mr. CLEARWATERS. I am sorry.

As I was saying, the Sherman Act, section 1, provides that a combination or conspiracy to restrain trade is unlawful and is a violation of not only the criminal laws, but also the civil laws of the United States. A combination or conspiracy means very basically that competitors get together to either fix prices or in some other way boycott the commerce of the United States.

Mr. CARNEY. I can't hear you. You are not close enough to the mike.

Mr. DINGELL. We apparently have a weak microphone and a large committee room. It would help if you would get as close to the mike as you can please.

Mr. CLEARWATERS. I am sorry.

The question of whether the antitrust laws would apply to the trucker boycott involves several issues which we are exploring and we are presently investigating this matter. One issue is whether we have, in fact, an agreement among competitors to engage in a nationwide boycott, or whether this is a unilateral action by one trucker, one independent entrepreneur responding to the situation, perhaps responding to press accounts by spokesmen of the various trucking organizations that they should not go out on the highways, or whether they are responding for their own safety.

Mr. DINGELL. What about a conspiracy to commit violence?

Mr. CLEARWATERS. A conspiracy to commit violence would be covered by one of the other sections of the United States Code.

Mr. DINGELL. Would a conspiracy to restrain trade by use of violence, could that be a violation of the antitrust laws?

Mr. CLEARWATERS. It would. In fact, we have cases from time to time that may contain a firearms count to blow up a competitor's establishment and also a count under the antitrust laws. What I am suggesting is that a pure conspiracy to commit violence would not be cognizant under the antitrust laws. So we have the question of can we ascertain who is making an agreement among the competitors? Who is conspiring? We are taking steps to ascertain that.

The second question is, Who are the responsible organizations that are the mechanism through which a conspiracy would operate? The third question is, Is this a legitimate protest that may be in some way protected under the first amendment? Under the Noerr doctrine and the antitrust laws the Supreme Court has said that protests made to your legislature or to your executive branch are protected by the first amendment. Certainly that is a very narrow conception of the antitrust laws and we construe it very strictly.

The final point, I think, is whether or not this is sufficient in duration, and it certainly looks as though it is, certainly looks as though it is serious, to amount to other than a technical violation of the antitrust laws. Is there a sufficient amount of counts involved? I think that spells out the issue where we are involved.

From the remedy point we have the question of getting an injunction even if we determine an antitrust violation exists. From a remedy standpoint, would we be able to get an injunction we would be able to impose on some responsible party?

I think that basically concludes my statement.

Mr. DINGELL. Any further assistance you can give the committee?

Mr. BAISE. Mr. Irv Jaffe, Assistant Attorney General for the Civil Division, with respect to the Economic Stabilization Act.

Mr. JAFFE. Actually we have very little in the civil area which can be utilized in light of the activity going on. We are watching and receiving reports to determine whether or not any possible violation of the Economic Stabilization Act can occur, or will occur. The Economic Stabilization Act, to the extent that it affects any of the activities of the truckers' conduct at the moment, would only have to do with either price or other controls and they are not violating those. Nor is there protest geared to a violation of any controls that are now outstanding. Should they do anything that would violate it, we can proceed against them both civilly and criminally under section 209 of that act, the responsibilities for which have been delegated to the Federal Energy Office.

The only other areas, since this is not a labor dispute under the injunctive provisions of Taft-Hartley— -

Mr. DINGELL. There is no labor question involved here. This isn't within the protection of the Wagner Act or Taft-Hartley. That is not a labor dispute within the meaning of those statutes.

Mr. JAFFE. That is what I said. I said there is no labor dispute here and that we do not have available the remedies of the Taft-Hartley Act.

Mr. DINGELL. You have the remedies available previous to the time section 7 was enacted.

Mr. JAFFE. We have the Norris-LaGuardia Act.

Mr. DINGELL. The Norris-LaGuardia Act does not apply.

Mr. JAFFE. It does not, except we have the basis of reviewing it now, unless we can make applicable what they expounded earlier, but we construe that holding as involving involvement of a Federal right. In that case there was interference with the Federal mails. There is no interference now with Federal involvement per se.

We have the same problem Mr. Clearwaters alluded to with respect to anything along those lines that was set forth in the Noerr doctrine as to whether this is a protest protected by the first amendment, a protest that is to the legislative branch or executive branch of the Government.

Mr. KUYKENDALL. May I ask a question?

Mr. DINGELL. Certainly.

Mr. KUYKENDALL. May I suggest that we stop telling what it isn't and start talking about what it is. Are there any laws that apply?

Mr. JAFFE. No; I was trying to explain—

Mr. KUYKENDALL. I don't think this committee cares why you can't act. If you can act, do you need help from us? U.S.C., destruction of motor vehicles, 18 U.S.C. 245, 18 U.S.C. 321, 18 U.S.C. 241, interference with rights of citizens, why can't you use some of those?

Mr. JAFFE. Mr. Maroney has explained we are watching for those and we haven't had any evidence of activities that aren't better taken care of, as I view it, by the State and local police authorities. Those are individual acts of violence. They are individual offenses and it would not be directed, as I understand the thrust of the inquiry to, the truckers' protest as a mass activity.

Now, as I indicated at the start, we do not have any facts or any activities which are covered by any laws of which I am aware which

would permit us to go in and either enjoin this activity at this point or take any other civil proceeding against the truckers as a group.

I was trying to explain statutes that might become available depending upon a change in activities which we are watching.

Mr. KUYKENDALL. Are you telling us that with the present activities you are helpless?

Mr. BAISE. I think we have to be careful. Mr. Jaffe is Assistant Attorney General in charge of the Civil Division, and under his jurisdiction is the Economic Stabilization Act. Before you arrived, Mr. Maroney—I think for the benefit of those arriving late, I should ask him to repeat what he had to say.

Mr. MARONEY. As we pointed out, the most likely criminal statutes which may become applicable to some of these incidents are basically the explosive statutes, the firearms statutes, the damage to cargo statute, and the Hobbs Act, which is basically a robbery or extortion statute.

Mr. KUYKENDALL. What about 15 U.S.C. 1281, damage to property—

Mr. DINGELL. If the gentleman would permit, the Chair will protect the gentleman's rights, but I want to hear from our witnesses on this matter. They have come on short notice and in fairness to them, we must hear their comments.

Mr. KUYKENDALL. All right.

Mr. MARONEY. With respect to section 1281, that relates to damage to cargo. As we indicated earlier, we have pointed these statutes out to the U.S. attorneys. We have requested the FBI to investigate fully any incidents which appear to be violations of these statutes. Any investigations that result in evidence of Federal violations will be pursued vigorously by the U.S. attorneys.

Right now it is a question of evidence. Basically what we have today is a series of incidents that have taken place, most of which come within the jurisdiction of the States' criminal laws.

Mr. DINGELL. We would like to have the completion of your presentation, gentlemen, so that we can have a record for this matter when we go to the floor.

Mr. MARONEY. I think basically the posture we are in is that there are a number of Federal criminal statutes which might be applicable to given incidents. I think basically most of what is occurring, as I have indicated, is a violation of local statutes which the police, I am sure, are in many instances enforcing. In any instances in which the FBI develops violation of Federal statutes, we intend to pursue such matters vigorously as the Attorney General has instructed all U.S. attorneys to do. We are at the point of having investigations.

Mr. BAISE. Miss Lawton may have a comment on the citizens radio band question, which Mr. Eckhardt raised at the very beginning of the hearing.

Mr. DINGELL. I think that would be most helpful.

Miss LAWTON. The citizens band radio is governed by FCC regulation. Licenses are required for the equipment. The FCC suspects there are any number of citizen band radios in use that are not licensed. The equipment is very cheap to obtain, apparently. The FCC has monitors out in the key States trying to zero in on these radios to

determine whether they have the licenses and comply with the other regulations of the FCC.

They will, in turn, notify us if they detect violations. These radios must be picked up on frequency monitors or come across by accident in other investigations. When violations are found, they will be turned over to the Attorney General for prosecution. There are injunction provisions in title 7 and forfeiture provisions.

The problem is detection. The FCC explained it to me as these are as numerous as technical traffic violations and the problem is determining where they exist. They have monitors out on the road in the key States now trying to find them.

Mr. BAISE. If I might, I will sum up then as to the steps we have taken in addition to asking all of the divisions of the Department to prepare areas where they think they might have jurisdiction. As you may read in the press, the Attorney General has conferred with the Director of the FBI, Mr. Kelley, and asked him to put FBI agents on alert throughout the country to investigate these alleged incidents, it there is Federal jurisdiction.

No. 2, you have the telegram from the Department to the U.S. attorneys requesting them to give priority attention to this matter and, No. 3, all the information that we are gathering is now coming into the Interdepartmental Information Unit, which is our coordinating group within the Department itself. That is being funneled both directly to myself and members of Mr. Saxbe's personal staff and we think at this point that is about all we can do until we have hard evidence based on alleged violations that we may be able to move forward on.

If you have further questions, we would be more than happy to attempt to answer them at this time.

Mr. DINGELL. Gentlemen, we thank you.

The Chair recognizes, first, members of the committee for questions. The Chair will observe very carefully the 5-minute rule.

Mr. Jarman.

Mr. JARMAN. I think the only question that I would raise would be to inquire as to how you are coordinating your activities with the State law-enforcement agencies.

Mr. MARONEY. Well, as I indicated earlier, the FBI in December, in connection with the incidents connected with the truckers' strike, was requested to step up its liaison with local law-enforcement agencies to insure that we would secure a nationwide status report on all incidents occurring in the country. The FBI, I am sure, in the past week has undoubtedly intensified such efforts.

As Mr. Baise indicated, all that information is coming on a daily basis, almost an hourly basis, into the Department's communication center. The Attorney General is keeping abreast of the situation in the various States and, as I indicated, the FBI has been asked to intensify investigation where apparent violations occur.

Mr. DINGELL. Thank you very much.

Mr. Kuykendall.

Mr. KUYKENDALL. Have you heard about the fact that we have actual towns in this Nation which are actually blockaded?

Mr. MARONEY. Towns being blockaded?

Mr. KUYKENDALL. Yes, sir; no traffic in or out by trucks in certain towns. For instance, I have one that by its very location is interstate commerce, Static, Ky.-Tenn., right on the line. It is blockaded. Jamestown, Tenn., is blockaded.

Mr. MARONEY. And traffic not allowed to move in?

Mr. KUYKENDALL. Truck traffic, it is blockaded.

Mr. MARONEY. Have the police tried to clear it?

Mr. KUYKENDALL. I don't know what they are doing. But I know when you have a town straddling two State lines it is in interstate commerce.

Mr. MARONEY. This is Kentucky?

Mr. KUYKENDALL. Kentucky-Tennessee, the town of Static. Doesn't an interstate matter automatically give you jurisdiction?

Mr. MARONEY. Does it bring into play criminal statutes?

Mr. KUYKENDALL. The Justice Department's concern.

Mr. MARONEY. We are greatly concerned.

Mr. KUYKENDALL. Has there been, during the last 10 days, a single person arrested with guns or explosives?

Mr. MARONEY. A number by the State authorities, yes, sir.

Mr. KUYKENDALL. Have you any records?

Mr. MARONEY. Any record of people arrested?

Mr. KUYKENDALL. Who are the people blockading Static, Tenn.? I can't believe there isn't some way you can find out.

Mr. MARONEY. I am sure we can. I didn't know that there was a town being blockaded and I would—

Mr. KUYKENDALL. When I say blockaded, I am referring to trucks.

The gentleman, Mr. Ware from Pennsylvania, this morning reported a local case of threat. But our citizens were demanding that we do something beside study the case.

Mr. MARONEY. We have certainly received a number of reports over the past weeks of arrests being made by State police and local police. I can't give you a rundown now, but I am sure we could get one.

Mr. KUYKENDALL. If an interstate trucker on the road is shot, is that not automatically your business?

Mr. MARONEY. Well, I don't know of a Federal statute that is violated in and of itself by that activity.

Mr. KUYKENDALL. I think shooting of a truckdriver has a little something to do with disruption of motorists using the interstate commerce system, vehicles operating interstate.

Mr. BAISE. You also have to realize you have local authorities and local police.

Mr. KUYKENDALL. I know that, but isn't it your business to find out who these people are? The independent truckers come in by the hundreds and swear they don't know anything about it, it is not their people. The Teamsters don't know anything; it is not their people.

Have you talked to the culprits? Have you talked to the people arrested? We want to know who they are.

Mr. BAISE. The FBI works very closely with State police and local police and if they have arrests, you can be sure the FBI has talked to them.

Mr. KUYKENDALL. Do you have any idea who they are?

Mr. BAISE. I can't sit here and list them. As far as identifying it as a conspiracy, we have a large group of people involved. We haven't even been able to come to that conclusion yet. What you have in the very nature of the title, independent truckers, there are a large number of individuals in this country who have decided they just don't want to work.

I am not sure what the Justice Department or city police or State police can do about that if we can't find any alleged violations of Federal statutes that we govern. The FBI has to investigate, has to gather evidence and then we prosecute.

Mr. KUYKENDALL. Is it or is it not a crime to take part in destruction of motor vehicles used in interstate commerce? Is that or is it not a crime under 18 U.S.C. 33?

Mr. MARONEY. I am not familiar with that statute.

Mr. KUYKENDALL. That happens to have been given to me as one of the prime statutes by a representative of the U.S. Government this morning; 18 U.S.C. 33, destruction of motor vehicles used in interstate commerce and lessening the ability of persons employed in connection with operation of a motor vehicle to perform duties.

Mr. MARONEY. I don't have the statute before me and from what you read—

Mr. DINGELL. The time of the gentleman has expired. The witness may finish his answer and then we will recognize Mr. Pickle.

Mr. MARONEY. From what you read I would have to agree, but I would have to further check the statute.

We have delineated a number of statutes which may be involved in isolated incidents and the FBI, I assure you, will investigate and will be requested to investigate such incidents. I can also assure you there have been a number of arrests in connection with this strike nationwide by local authorities.

Mr. DINGELL. Mr. Pickle.

Mr. BAISE. Mr. Chairman, may we add an additional comment?

Mr. DIXON. A footnote to Mr. Maroney's comments. I don't have the full code with me, but I have a fragmentary note that suggests that title 18, section 33, may be restricted by section 31 to passenger-carrying vehicles, which, if true, would cause a problem with violence to trucks, not the passenger vehicles. We don't have the full section before us.

Mr. DINGELL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I don't have any questions except to make an observation. The Congress is trying now to find some kind of legislative answer that would be of help and would be applicable to the parties concerned. We have a serious problem and we have to do our best to try to find equity.

Now, as we do our part, the Congress will expect the Justice Department, will demand it of the Justice Department and of local law enforcement officials, to be certain that the rights of individuals are protected, that property is protected, that safety of the persons involved is protected. I don't charge this, but it would appear to me that there has been more of an attitude today of understanding the problem, or looking at the problem, rather than a resolve to do something about it.

I think it is imperative, to the extent you have jurisdiction in all these areas, that you tell us how and what you are doing even more specifically than what you have done this afternoon by verbal testimony.

I would ask that you give this committee as an immediate follow-through your analysis of violations, where they are occurring, and where there are interstate violations involved and what should be done and if anything additional should be expected of us. I ask you to submit that immediately.

That is all, Mr. Chairman.

Mr. BAISE. Mr. Chairman, we can submit to your committee the same document we will be submitting to the Attorney General which will set forth seriatim the statutes under which we believe we have jurisdiction to deal with this matter.

Mr. DINGELL. Without objection that will appear in the record at this point.

[The following material was received for the record:]

LIST OF STATUTES HAVING POSSIBLE BEARING ON SO-CALLED "STRIKE" OF
INDEPENDENT TRUCK OPERATORS

February 21, 1974.

To: The Attorney General

From: Marshall L. Miller, Associate Deputy Attorney General.

Subject: Investigation of independent truck operators.

The following is a crude list of statutes given to us by various branches of the Department which might have a bearing on the so-called "strike" of the independent truck operators. I am preparing a memorandum in which I shall analyze the applicability of these statutes.

CIVIL RIGHTS

18 U.S.C. 241—Freedom of interstate travel.

CRIMINAL DIVISION

18 U.S.C. 1361—Injury to government property or contracts.

18 U.S.C. 922 and 26 U.S.C. 5861—Firearms statutes.

18 U.S.C. 844—Explosive statutes.

18 U.S.C. 875(c)—Interstate threatening communications.

47 U.S.C. 223—Harassing telephone communications.

18 U.S.C. 231, 2101, 245(b)(3)—Anti-Riot Laws. (See U.S. Attorneys' Bulletin, Vol. 16, No. 16, dated July 26, 1968.)

15 U.S.C. 1281—Willful destruction or damage to property in interstate commerce.

18 U.S.C. 1951—Hobbs Act. (Requires robbery or extortion.)

49 U.S.C. 322(a)—Unlawful operation of motor carriers. (See for regulations: 49 CFR, Part 392, U.S. Attorneys' Bull., Vol. 20, No. 14, p. 514.)

ANTITRUST DIVISION

29 U.S.C. 52—Sherman Antitrust Act. (May not be applicable.)

29 U.S.C. 102, 101-115; 29 U.S.C. 104, 113—Clayton Act. (May not be applicable.)

CIVIL DIVISION

P.L. 92-210 (85 Stat. 743); P.L. 93-28 (87 Stat. 27) §§ 208, 209—Economic Stabilization Act of 1970. (Probably not applicable.)

P.L. 93-159 (87 Stat. 627), Nov. 27, 1973—Emergency Petroleum Allocation Act of 1973. (Probably not applicable.)

45 U.S.C. 151—Railway Labor Act. (Probably not applicable.)

29 U.S.C. 176—Taft-Hartley Act. (Probably not applicable.)

29 U.S.C. 101—Injunction in labor disputes. (Probably not applicable.)

49 U.S.C. 303(b)—Interstate Commerce Act. (Probably not applicable.)

MR. DINGELL. The Chair recognizes Mr. Ware.

MR. WARE. Thank you, Mr. Chairman.

One brief statement with regard to a remark on the record earlier. I said that I had not been contacted by any independent truckers. My office tells me that there were three such individuals in my office at some time in the past, one not from my district. They seemed to be reasonable people.

I would add to what I said earlier in the day, that since that time I understand that an attempt to blow up an overpass on the Pennsylvania Turnpike near Beaver Falls was made, apparently unsuccessfully, and I have also been told that Lukens Steel Co., which is endeavoring to make some shipments by railroad rather than truck, were told by the Reading Railroad, which is the carrier involved, that instructions went out to truckers to block the right-of-way with trucks and instructions also included directions as to how to remove the bolts from the rail ties so that, of course, the railroad would become inoperative.

I would assume that these matters have been reported to the police and that local and State authorities are involved. I would hope that the FBI has been notified and that some evidence may become available to the Justice Department which would permit proper action.

I do not fault you if you don't have evidence which the U.S. attorneys need to proceed. I only repeat I hope we can get to the bottom of some of these acts which are intimidating our people and creating shortage of food, resulting in unemployment, et cetera.

MR. DINGELL. Mr. Adams.

MR. ADAMS. I will be very brief, Mr. Chairman, because I am not satisfied this statute is going anyplace or has been anyplace.

I have been a U.S. attorney and I understand some of your problems. But the point that is being made is that under the Hobbs Act, which is 18 U.S.C. 1951, I am sure you are familiar with it, basic provisions have been used in the past to prevent extortion, particularly on the docks and in the use of interstate commerce by people threatening others if they were to cross a picket line or, even if there were not a picket line, to carry goods into a particular area.

We used to call it the head-buster statute. Now, what the question is that the members keep asking, and I am not going to badger you about it, is that we apparently have—I see this only from the pictures in the front of the various newspapers of the truckstops being blockaded, towns being blockaded by people walking from their rigs and I simply would like to ask if any arrests have been made on the basis that they are—and I agree they are local offenses involved—an attempt to extort from those carrying in commerce their right to proceed, in other words, the blocking of their passing legally.

This goes back to the original question of Mr. Dingell, if you don't use the Hobbs Act, you use the original injunctive relief, although I am not sure injunctive relief is necessary, and the criminal statute, which keeps one person from threatening the life of another. Have there been any arrests on that basis?

MR. MARONEY. I don't believe there have been any arrests. Of course, that statute deals with a threat to take money or other act of violence. I think the problem now is an evidentiary problem. If you could show a nexus between a threat and, let's say, demands made by negotiators, then you might have a violation of the Hobbs Act.

Mr. ADAMS. No; the violations have been made on basically this basis, that a man wishes to proceed with his livelihood or to carry goods from one place to another, which is a property right, and he is being prevented from doing so by an organized effort to say, "You cannot do it." I have only the hearsay evidence that comes from the newspapers and the other pictures, but I simply want to know if you have sent an agent into a truckstop that is blockaded with a group of people, because the rigs are indefensible, questioned the drivers who are there and said:

We are of the opinion that you are part of a conspiracy to prevent the operation of this truckstop and to prevent anyone from moving through here.

At that point you either proceed with arrests or you have decided that this is simply a man who is out of gas. I simply want to know if you have proceeded with such a case since this started approximately a week ago.

Mr. MARONEY. I think basically the situation you are talking about there would relate to the Civil Rights Act, section 241.

Mr. ADAMS. Perhaps, or else under section 242. But I am asking again whether or not any action has been brought of this nature in the country resulting in arrest? If so, we have not heard of it because there have been no announcements and I think what the members are announcing is that this will—what is going on will continue for an indefinite period until either the trucking industry itself and its members use self-help, which will lead to a riot situation, which brings in another section of the statute, or the Government says, "Thou shalt not any more." I am asking have you arrived at that point yet?

Mr. MARONEY. I don't think there have been any arrests under that provision.

Mr. ADAMS. Or any other provision that you know of. I know of no arrests in the country on interstate violation.

Mr. MARONEY. I know of none either.

Mr. ADAMS. Does any other member of the panel have a comment?

Mr. BAISE. I have a report from our information unit in the Department. There have been local arrests, but no arrests by FBI agents or any other Federal agency as this report reflects as of that hour.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. McCollister.

Mr. McCOLLISTER. I presume it is not necessary to tell the U.S. attorney in each State to get alert to the possible violation of Federal law.

Mr. BAISE. I am sure of that, but in addition the Attorney General has sent a telegram to all 94 U.S. attorneys, asking them to put this particular problem on a priority basis.

Mr. McCOLLISTER. When was that telegram sent?

Mr. BAISE. Yesterday afternoon at about 3 o'clock, I think.

Mr. McCOLLISTER. Can anybody on the panel tell me—

Mr. BAISE. Excuse me, Mr. Chairman, would you want this telegram?

Mr. McCOLLISTER. I would ask unanimous consent that the telegram be entered in the record.

Mr. ECKHARDT. Is this the same telegram that was read?

Mr. MARONEY. No, that was one sent by the executive office on the instructions of the Attorney General.

[The text of the telegram, with attachments, follows:]

DEPARTMENT OF JUSTICE,
February 5, 1974.

To: All United States Attorneys (overseas offices included).

From: Philip H. Modlin, Director, Executive Office for United States Attorneys.

Subject: Demonstrations and violence in connection with the truckers' protest.

It is the Attorney General's desire that all appropriate law enforcement efforts be pursued vigorously with respect to any violations of federal law in connection with the nation-wide truckers' protest.

In this context, the Attorney General has directed that all U.S. Attorneys give their personal attention to demonstrations and violent activities, and state and local law enforcement efforts with regard thereto, occurring in their districts in connection with the protest.

Each U.S. Attorney should be alert to conditions which come to his attention, which are not and cannot be handled by state and local authorities, by complaint or otherwise which indicate possible violations of any of the federal statutes. The facts and circumstances pertaining to any such violation should be referred to the Federal Bureau of Investigation or other appropriate investigative agency for prompt investigation on an expedited basis.

You are requested to assume the initiative in the handling and disposition of any such incidents developed in your jurisdiction. Your liaison with state and local authorities should follow the suggestions outlined in Departmental Memorandum No. 782, dated November 30, 1972 and Supplement 1, dated March 6, 1973.

Please advise the Department of Justice information center as described in the message from that center to you on December 12, 1973, of any actions taken by you pursuant to the above.

DEPARTMENT OF JUSTICE,
Washington, D.C., November 30, 1972.

Memorandum No. 782.

To: All United States Attorneys.

Subject: Establishment of Federal-State law enforcement committees.

This memorandum is prompted by a desire to effect an improvement in the coordination and liaison between federal and state and local law enforcement authorities in those areas of the law in which we share concurrent jurisdiction.

Recently, as you know, the Department has sought to eliminate any lapses in the investigation and prosecution of two troublesome concurrent jurisdiction offenses: cargo thefts and auto thefts. On October 20, 1971, Mr. Kleindienst, as Deputy Attorney General, directed the United States Attorneys throughout the country to contact their state counterparts and endeavor to enter informal agreements with those officials so as to eliminate the lapses in enforcement just described. Your responses to his request indicate that the U.S. Attorneys in approximately 80% of the Federal Judicial Districts were successful in entering agreements. I am sufficiently encouraged by this success in the informal agreement effort to request that action be initiated to further implement this idea on a continuing basis.

The purpose of this memorandum is to urge you to explore the feasibility of establishing a permanent federal-state law enforcement committee to focus upon and adhere to the needs of law enforcement within your state. The committee envisioned would consist of key state and local law enforcement officials and appropriate federal representatives. Such an enforcement committee could do much, through regularly scheduled meetings, to achieve a long term coordinated effort by the state and local authorities and the Federal Government which would provide effective criminal law enforcement in those areas where we share concurrent jurisdiction.

The exact composition and size of a federal-state law enforcement committee, and the channels through which it should be established, are matters which should be left to your discretion and knowledge of the situation in your locality. In addition, coordination with other U.S. Attorneys will obviously be necessary in those states containing more than one Federal Judicial District.

As you may know, the United States Senate Select Committee on Small Business, chaired by Senator Alan Bible, deserves a great deal of credit for exposing the dimensions of the cargo theft problems confronting the nation. In this regard, Senator Bible has found the concept of federal-state law enforcement committees sufficiently meritorious with reference to the cargo theft problem that he has agreed to endorse this concept in letters addressed to all 50 state Governors. A copy of the letter that Senator Bible will send to the Governors is attached for your information and assistance in contacting the appropriate state officials within your respective states.

The cargo theft area could serve as an excellent starting point for a federal-state law enforcement committee. A copy of the proceedings of the 1972 National Cargo Security Conference is enclosed to assist you in familiarizing yourself with the dimensions of the problem. I suggest you review the material and take steps to determine the extent of the problem in your Judicial District. In this regard, you will find it profitable to convene a cargo security meeting, with state and local law enforcement officials and representatives of the transportation industry in attendance, in order to insure that you are in a position to tackle specific problems when a federal-state law enforcement committee is formed. To assist you in planning for a preparatory cargo security meeting, I have enclosed a list of the cargo security representatives of a number of state Governors. This list was produced in response to a letter from Secretary Volpe of the United States Department of Transportation, in which he sought state level support for the fight against cargo theft.

Please advise me by letter of the results of your efforts to establish the Federal-state law enforcement committees by February 1973. Specifically, it is requested that your letter set forth briefly the nature of the committees that you were able to establish. Coincidentally, should you decide to convene a cargo security meeting as well, please notify me. The Department will assist you in any way possible to insure the success of your plans. If you were unable to persuade the state and local authorities to participate in this effort, it is requested that you briefly advise me by letter regarding the difficulties you encountered and the courses of action that you may be pursuing to overcome those difficulties.

I am looking forward to hearing from you concerning the results that you have achieved in this most important endeavor.

RALPH E. ERICKSON,
Deputy Attorney General.

DEPARTMENT OF JUSTICE,
Washington, D.C., March 6, 1973.

Memorandum No. 782, Supplement 1.

To: All United States Attorneys.

Subject: Establishment of Federal-State law enforcement committee.

As you will recall, the memorandum of November 30, 1972 suggested that the cargo theft problem would be an excellent starting point for discussion once the federal-state committees were organized and ready to consider substantive problem areas. In this regard, I am enclosing for your information a report of the Secretary of Transportation to the President concerning the status of the cargo security program and the letter of the President dated February 1, 1973 indicating his continuing interest in this important matter. Your attention is particularly invited to page 13 of this report relating to the law enforcement program of this Department in this area of criminal activity. Also enclosed for your perusal is a letter from Paul Schuster, the Acting Chairman of the American Transportation Association, in which he urges the State Motor Truck Associations around the country to support the programs outlined in Departmental Memorandum No. 782.

If you have not already reported your efforts relative to the establishment of a federal-state law enforcement committee in your locality, it is requested that you do so by March 19, 1973.

JOSEPH T. SNEED,
Deputy Attorney General.

Mr. McCOLLISTER. Do you gentlemen have any knowledge of certain magazines, publications, whose readers or subscribers are members of independent truckers, in any way encouraging the kinds of actions that we are talking about this afternoon?

Mr. BAISE. Are you speaking of Overdrive magazine and suggestions? I will label that "suggestions," which have been made in that magazine, to engage in certain types of actions?

Mr. McCOLLISTER. I am not referring to any in particular, but generally, and I am about to ask the question, can that be construed as inciting to riot or in any way encouraging the kind of activities—as I view what I have heard here and the difficulties you have had, one is finding somebody to sue or somebody to enjoin. Does that offer you some opportunity?

Mr. MARONEY. Well, I am not familiar with the particular magazine you are talking about.

Mr. McCOLLISTER. I am not talking of a particular one.

Mr. MARONEY. If there were a magazine put out by a group which advocated violation of these statutes and pursuant to such advocacy or an agreement, a concert of action, steps were taken in furtherance of such an agreement, yes, that would violate the statute.

Mr. McCOLLISTER. The thrust of your testimony so far, that I have obtained, is that you are having some difficulty with jurisdiction. You are having some difficulty identifying the people responsible or persons responsible and you are convinced at this point at least that this is a matter of State and local law, is that correct?

Mr. MARONEY. I think primarily, but there are certain real probabilities of violations of Federal laws such as the explosives and firearms acts and those will be pursued.

Mr. BAISE. I think what we have to bring out at this point, Congressman, is the fact it takes some time to gather evidence and the FBI is pursuing that very diligently. They have been at it 72 hours and it may very well be that yet this evening or tomorrow we will have some evidence from the Bureau to turn over to various U.S. attorneys around the country to move forward on isolated individuals, but at this point we are just not in a position to give you the kind of statistics I think you want.

Mr. McCOLLISTER. I would like to underscore something that Mr. Kuykendall has perhaps said a bit more mildly, that it is incredible, that is the reaction of a lot of people, that these things can happen and that the Federal Government is not better prepared to deal with it than what seems to be the case. It is my feeling that if we cannot get more prompt resolution of the difficulty and determination even of the direction to go, it would seem that either the Department of Justice has been slow to respond or that you need legislation to enable you to act more quickly, because the public is simply not going to allow this to take place and I would urge you to tell us whether you have been slow to respond or whether you need legislation to deal with the issue.

Mr. BAISE. I would like to address that question. No. 1, no, I don't think we have been slow to respond. We started Saturday morning identifying the divisions having jurisdiction in this area. We have asked the FBI to put this on a priority basis in terms of investigating incidents. We have put the U.S. attorneys on notice. I don't know what else we can do at this point other than to call in the special operations group of U.S. marshals as we did in the Wounded Knee situation and send them out to various truckstops.

Mr. McCOLLISTER. That is a good suggestion. The afternoon has been worthwhile.

Mr. BAISE. I think, first, we have to remember that the Department of Justice awaits the request of the State to come in and assist them. We have not had any request from Governors to come in and augment their National Guard troops. We have, as of this summary, a number of States which have called out their National Guard.

Mr. DINGELL. Would you yield?

I would say Federal statutory responsibility is imposed on the Justice Department. You mean you wait for the State to call on us first?

Mr. BAISE. I was addressing the marshal question we were discussing to bring in additional armed police or things of that sort. No; I am not saying what you are thinking.

Mr. McCOLLISTER. No further questions.

Mr. DINGELL. Thank you, Mr. McCollister.

Mr. Eckhardt?

Mr. ECKHARDT. I for one am glad you do wait for a request from a State before engaging in Federal police action in that State. I understand that is your policy even with respect to FBI activities, except in special instances, until there is a request from the State for participation. Frankly, I think criminal law is primarily the authority of the State. I think it is extremely dangerous to create too extensive and too eager criminal authority at either the police or enforcement stage, but I would suggest that there may be areas where Federal law should reach and that is the area of instigation of interstate offenses, and I think what Mr. McCollister has brought up would indicate there is instigation utilizing the instrumentalities of interstate commerce and carried out through those instrumentalities by overt acts.

Now, if that is done in connection with action in which three or more persons are involved, it falls directly, as I understand it, in the Antiriot Act of 1968. That is title 18, section 102, of the United States Code, and I don't think there has been any mention of that here. It, of course, is somewhat fashioned after the Antiracketeering Act, as I recall, and I think was fashioned in the period of civil disturbance riots of that period. It was the basis, I think, of the *Chicago Seven* trial.

Now, I am not one who urges you to act federally if you can get criminal action on the State level, but where the act is instigated in interstate commerce, it would seem to me there is a special nexus of Federal concern. I would like your comments on that. In the first place, does that statute not reach activities of a nature that has been described to us in many instances; for instance, a magazine that invites persons to take self-help action, and then perhaps persons connected with the same organization that the magazine is distributed by, themselves are there at the spot and participate in activities?

It seems to me that that falls exactly under the antiriot statute.

Mr. MARONEY. I think 2101 and 2102, which you first mentioned, might come into play. It is one of the statutes we added to the list yesterday along with the four that were mentioned in the telegram that went out Friday. There are a number of statutes which could become involved in some of these situations which I didn't make

mention of, but there are other statutes, and I think that the problem at this point is an evidence problem.

If we get the evidence to establish violations of the Federal Criminal Code, we will pursue that.

Mr. ECKHARDT. I would hope that you would seek that evidence at the level of instigation rather than in the case of some driver who in a moment of zeal or anger at the price of diesel fuel engaged in some instance that is just a simple criminal action within the State.

Mr. MARONEY. That is exactly right, and I think undoubtedly many of these incidents are undoubtedly individual acts of one person who decides he is going to get in the action for one reason or another, and he does this on his own, not as part of a general conspiracy.

Mr. ECKHARDT. I have the feeling that our criminal arm, both State and Federal, should be adequate to keep us from being catapulted into hasty action with respect to changes of the nature of this resolution; and I think that if you are diligent in this activity, perhaps we may escape something that might be done under the gun of threatened violence. I would certainly appreciate what could be done through your Department.

I will yield back the balance of my time.

Mr. DINGELL. The Chair now recognizes Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman. I am sorry I missed much of the dissertation here, but realizing I am sure that there are legal minds on both sides covering this quite thoroughly, I won't go over some of the questions I have other than to ask this particular question. You are aware that we have a problem today and that we have been aware that this problem was coming on us for a couple of months.

What bothered me was that we have been researching this, and I get the feeling that you are still busy looking up the laws. I feel we need some action now because of the people that are unemployed now, not tomorrow or the next day. Is there any area where the Federal Government can react now in order to start getting the goods flowing again? I guess that is a yes or no question.

Mr. BAISE. If you are looking for dramatic action out of the Department of Justice—to go out and arrest, through the FBI, hundreds of truckdrivers tonight, no.

Mr. SHOUP. That was not my question. My question was, Is there any way the Federal Government can start the flow of truck transportation of goods in the immediate future?

Mr. BAISE. I wouldn't attempt to answer for the Federal Government, only try to answer for the Department of Justice and the jurisdiction that we have.

Mr. SHOUP. Fine.

Mr. BAISE. As I said earlier, and I think the individuals have outlined their areas of jurisdiction, we are in the study stage, we have advised our people to move and move quickly, and if they can find something, find evidence, get it to the U.S. attorney immediately. Now, I don't know what further steps we can take, Mr. Congressman.

Mr. SHOUP. Fine, I am not getting on your back on this type of thing. It is just the fact that I get phone calls from my district that say not next week will we have a problem, we have a problem today.

Is the Justice Department able to do anything about the problem that exists at 3:23 p.m. in Missoula, Mont.? So I understand that, no, there is nothing, but if they find something, then you will, is this correct?

Mr. DIXON. I don't think we should view it as doing nothing. The problem has certain aspects that are quite intractable, but perhaps not insoluble. The negotiations are continuing, and that is our best solution because we are dealing with independent contractors who cannot be forced to work. They may be in violation of their contracts; they may be losing money, facing bankruptcy; but we can't move in on that if they want to face the risk.

It is true, as you recall, many years ago we had the so-called Pullman strikes out of which the *Debs* case came, and based on constitutional authority only, an injunction was issued. But there is this difference: in the Pullman strike, there was an organized union activity with a leader as a target.

Mr. SHOUP. Thank you very much. I appreciate that. May I get more direct on this type of thing; is there anything the Justice Department can do to insure that interstate commerce will continue? I am not saying after the fact; I am saying before. We used to call it riding shotgun to make sure the mail got through. Is there anything that can be done now to make sure the threats, acts of violence, are precluded and not wait until the act happens and then try to gather evidence? I would rather have something done before rather than after.

Mr. DIXON. The States are trying to ascertain violations and make arrests, and they have. The Federal force is not as large as the State force. I don't think we should move in and occupy the cabs and have substitute drivers; I am not certain that could be easily worked out legally. To be sure, if you get to a crisis, you can—

Mr. SHOUP. I think you miss the point of my question. Does the Justice Department have the authority to put a U.S. marshal riding shotgun on a truck, going along to protect, to make sure interstate commerce continues to flow?

Mr. DIXON. I think that would require a special statute.

Mr. SHOUP. A special statute?

Mr. DIXON. We have no statutory authority for that now.

Mr. MARONEY. I might say some of the States with the more serious problems have taken precautions to arrange just the kind of things you are talking about, for example, providing police escort for convoys of trucks and, of course, the National Guard is active in a number of the States now. I am sure that kind of protection can be provided by the States and the States are providing it where it is required.

Mr. SHOUP. Thank you.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the gentleman from New York, Mr. Lent.

Mr. LENT. I only have one or two questions.

A couple of years ago there was a disruption in one of the local airports up in New York. Some people didn't want an airplane to take off because there were arrests made and charges of violating certain Federal statutes that apparently exist on the books. I am no expert in this field.

I am listening to you, and taking my signals, which say that you cannot obstruct the landing or taking off of an airplane if it is in interstate commerce.

I would assume there are Federal statutes to prohibit the impeding of railroad trains in interstate commerce. Is there not similarly a statute which would make it a violation to interfere with interstate highway traffic? If there isn't, perhaps we should have one.

Mr. MARONEY. There was one referred to earlier, section 33, which in general terms would appear to cover, generally, interstate vehicles but, as Mr. Dixon pointed out, subsequent to that, by the provision of section 31, it is limited to passenger vehicles. So trucks would not be covered; a bus would be.

Mr. LENT. Just a slight amendment, or just a few words would give you the kind of authority you would need in the interstate highway field that you now have in the interstate airplane field and interstate railroad field?

Mr. MARONEY. I understand from a discussion with Mr. Petersen last week that the Department has over the years from time-to-time sought such broader legislation without success in the Congress.

Mr. LENT. I don't think he would have too much problem at this particular time in history. The situation being what it is, you have a very good climate for Mr. Petersen to resurrect that old chestnut and bring it out, and it might pass.

The other question, it is a rhetorical question, I suppose, is how long would you leave a U.S. highway blockaded to truck traffic before you cleared it without a State request?

Mr. MARONEY. I would think the primary responsibility to act there would be with the Governor, and the Governor I am sure would utilize the local police and National Guard if necessary.

Mr. LENT. Assuming you didn't have a request from a Governor but there was a highway blockaded, isn't there a certain point when the Federal Government could move in to open up that Federal highway? At what point would that occur?

Mr. DIXON. We do not have the authority to send Federal Armed Forces to a State without the request of the Governor.

It is true we have that old, old statute, the one I mentioned before, the Ku Klux Klan Act which makes it a Federal offence if two or more persons conspire to interfere with anybody's constitutional rights and the Supreme Court says the right to travel is a constitutional right.

That is being explored but it is a rather inartistic weapon for the present situation. I am not ignoring it but it doesn't fit like hand and glove.

Mr. KUYKENDALL. There are not many things spelled out explicitly in the Constitution of the United States, but interstate commerce is one of them. This Federal Government has assumed one heck of a lot of power the Constitution never intended it to have. And I can't recall, since coming to Congress four terms ago, being so shocked as I am to learn that you can't act in this emergency, which is getting worse by the day.

Mr. JAFFE. I would like to say, because I think we are losing sight of it, we are prepared to act under various statutes we have, both

criminal and civil, as soon as we have evidence justifying our stepping in.

Mr. KUYKENDALL. I would like you to try to sell that statement to my constituents, sir.

Mr. JAFFE. Let me continue. What we have received knowledge of are individual acts of violence. Those acts of violence have been pursued by State and local authorities as effectively as they can through arrests and otherwise.

In many instances no one has yet found out who the perpetrators are. What we are trying to solve, what I think the Congress is concerned with, the people are concerned with, and everyone is concerned with, is what we can do about the entire situation.

We have no evidence this is a concerted effort violating any law. So far as it now appears, especially from the statements of truckers that have been made, that this is a constitutionally protected protest both to the Congress and the executive branch.

They are meeting with their Congressmen when they can, and members of the executive branch, either to get legislation or relaxations. That is the exercise of a constitutional right. If there are blockaded highways, we have requested in the last incident of it that the States get their local police to have towing wagons take them off the roads. They have.

What you are suggesting is that the Federal Government exercise a police power within the confines of a State. I think we ought to be a little careful about exercising that power without the request of a State that says its own police powers are deficient in that area.

Mr. KUYKENDALL. I suggest this, instead of worrying so much about a conspiracy, instead of worrying so much about whether or not it is organized or disorganized, and instead of worrying about whether the court case will stand up against one individual, why don't we first see the highways are cleared and then take those step by step. That is what the people are going to be demanding more a week from now than today.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the gentleman from Maryland, Mr. Byron.

Mr. BYRON. Could I get back to something specific? We have just west of here two full counties in Western Maryland, they are caught in kind of a vise and I wonder if we couldn't look at that for a minute. I don't know if Governor Mandel has asked at this point to bring in that so-called strike force you talked about that went out to the Wounded Knee situation—

Mr. BAISE. No, he has not.

Mr. BYRON. I know he has called out the National Guard, but wouldn't it seem where two full geographic areas are cut off with roads and so forth, there has to be some kind of presumption that there would be an agreement or some kind of concert of action, or would you operate under that possibility?

Mr. JAFFE. We are drawing an inference from a set of circumstances and, unfortunately, that is not sufficient evidence for us to establish either a conspiracy or that there is concerted action. We may all believe that it must be so but it is short of evidence.

Mr. BYRON. You mentioned earlier about the citizens band radio and I would think it would take something more than just smoke

signals to communicate in an area like that, that perhaps where you have a geographic area involved where roads are being blockaded that there must be some type of—it would have to be an assumption that some type of communication is being used. Wouldn't it be possible to get the FBI to listen in on citizen band radio and put the pieces together?

For instance, I know several of the FBI agents that happen to live in my congressional district and I am sure if they were here right now asking the very questions I am asking you, they are citizens of the district, they would probably be able to be much more specific and refer to the fact that it is a concert of action and that it may well be a conspiracy to violate one of these Federal statutes you referred to.

Mr. JAFFE. Those citizen band radios and other means are being monitored. If they develop any information, certainly we will use it.

Mr. MARONEY. If it is simply a conspiracy or agreement not to drive, that is a completely different matter. That is basically a strike.

Mr. CLEARWATERS. You can make an argument under the Sherman Act. I think the problem in law is that in any conspiracy, be it under title 18 or under the Sherman Act, you have to find the culprit. These are basically moving violations, as it were.

I think identifying responsible people against whom you can take action is going to be a difficult problem. I understand this is an unusual problem.

Mr. BYRON. Let me go back to the strike force, I am sure the Government is doing everything we can in this situation.

I join with the gentleman from Tennessee in the feeling of frustration. Here are two counties with only two gasoline stations open at the moment, a dwindling supply of food, problems with medical assistance, the schools closed.

I would hate to think that we would have to sit here and be helpless to this fact within 250 miles of this city.

It seems to me if the Wounded Knee situation required some kind of response on the part of the Federal Government, clearly this situation would require a similar type of response, particularly since it is on the front pages of the metropolitan newspapers here.

Mr. BAISE. The Governor today, we understand, ordered the National Guard to take in 8,000 gallons of gasoline to those two western counties. I assume the Governor will, if necessary, do the same with respect to food supplies.

Mr. CLEARWATERS. I think another part of the problem is that the criminal laws, as I think was indicated earlier, are kind of cumbersome to the extent that they do not enjoin behavior generally. If, under the Sherman Act, which is in my peculiar province, we were able to prove a violation, we would still have to find somebody against whom we could levy an injunction; that would be a responsible individual that would not just walk away and thumb his nose at the court.

Mr. BYRON. I think we all know from the enforcement of the revenue laws with regard to alcohol, when you take a little deterrence, it goes a long way up in the mountains. I think we are experiencing this in western Maryland. It must be going on from Pennsylvania to West Virginia, everywhere else. All of us maybe should take a particular location and apply the Wounded Knee application to it and see what happens. I just suggest that.

Miss LAWTON. Could I answer?

Mr. DINGELL. Yes; I think that would be appropriate.

Miss LAWTON. The Wounded Knee situation did involve Federal property which makes it quite different. We would have to, in effect, override and ignore the Governor or basically what is State property to go in. Should mailtrucks be stopped and unable to enter the two counties, that would be a different situation. Should some other Federal interference be involved, a different situation. It is not quite the same because it is not Federal property.

Mr. BYRON. If the Governor did ask, you would consider going?

Miss LAWTON. We would consider providing assistance to the Governor. How, or under what particular law, we would have to work out, but if he asked we would certainly consider it.

Mr. BAISE. If I might add an additional comment, what can the Justice Department do now to open up the highways as of 5:30 this evening?

We have certain laws we can enforce that we are involved in. I don't know the agencies that have been appearing before your committee this afternoon, but I know in White House discussions in which I have been involved, the Office of Emergency Planning and GSA have been included in discussions such as these counties in western Maryland having difficulty getting food and gasoline in.

There is another part of the Federal Government which will be looking at the problems created by a supply shortage. That is not something that this Department can direct its attention to at this time.

It seems to me that is another part of the executive branch you need to bring before you to discuss that problem.

Mr. DINGELL. Mr. Heinz?

Mr. HEINZ. Thank you, Mr. Chairman.

We were discussing earlier the circumstances under which the special units of U.S. marshals might be utilized.

Now, I come from an area of western Pennsylvania where we have had more than our fair share of incidents of violence.

You may have read last night there was an attempt to dynamite one of the overpasses on the Pennsylvania Turnpike. At the present time, four out of every five filling stations are closed because it is impossible for the fuel trucks to resupply the filling stations because the people driving the fuel trucks are very afraid of incidents of violence being directed at them individually.

They are being put in the position of having to choose between their livelihood and their life, which, as I understand civil rights laws, is not a choice that people are supposed to have to make.

The problem, further up there, is that there just aren't enough State police, local police, or National Guardsmen with wooden bullets to enforce the law.

There aren't enough people to prevent law breaking; there aren't enough people to apprehend those who are engaged in illegal acts. It's not just a question of investigation, it's not just a question of prosecution. It's a question of basic public safety.

If the Governor of our State were to make a request for additional assistance, what kind of assistance from the U.S. marshals unit might he expect?

Mr. DINGELL. The Chair is compelled to reluctantly observe we have two bells, there is a vote on final passage I am advised by the staff. The Chair will preserve the gentleman's time.

The Chair would make the following announcement: We will recess while we go to the floor to respond to the bells.

It is the intention of the Chair to have the staff during this time notify all members that we will have an executive session immediately on the conclusion of the questioning by the gentleman from Pennsylvania and the gentleman from Kentucky to consider the bill.

The present occupant of the Chair has been advised by the chairman that it is his intention to take this matter to the Rules Committee at the earliest possible moment. We will, therefore, with apologies to my two colleagues and to the guests on the panel, recess at this time. I suspect we can be done with this matter insofar as questions and resolve into executive session at about 6 o'clock.

Please notify the members, Mr. Clerk, and we will complete the questioning and go into executive session.

Is there further discussion?

Mr. SHOUP. What time are we to return?

Mr. DINGELL. Six o'clock.

The committee will stand in recess about 10 minutes.

[Brief recess.]

Mr. DINGELL. The committee will come to order.

The Chair recognizes Mr. Breckinridge.

Mr. BRECKINRIDGE. Gentlemen, if I might change the line of consideration for a minute, we have spent a lot of time here on law enforcement. Let me talk a little about the problem of prevention and ask a question that the chairman asked earlier in another direction.

We have before us this resolution which is the purpose of our considerations this afternoon and, if I heard the testimony correctly this morning, it was to the effect that this will affect a majority of the ton-miles of regulated carriers but not a majority of the truckowner-operators.

The people that are killing truckowner-operators are not ton-miles and this leaves me with the impression that we may be whipping a dead cat and not getting a great deal done except spending a day here.

I guess my question is this, does the Department of Justice, for and on behalf of the executive branch, have a task force in that area which is considering the variety of complaints that are being brought forward by the affected owner-operators, with a view toward developing such legal and/or legislative remedies as may be preventive in nature—and remove the cause of this condition that we would also like law enforcement in reference to?

Mr. BAISE. We don't have a law enforcement division. We have a group to study those issues you have raised, and the Department is reviewing that substantive legislation you referred to.

Mr. BRECKINRIDGE. Am I understanding you correctly when I hear you say the Department of Justice is not reviewing the legal aspects of that phase of the problem, not just this but every phase of the problem that is being brought forward by this group and if this is being done anywhere, it is being done by the OMB and what is the OMB doing?

Mr. BAISE. Every phase of law enforcement that may give us a handle on this problem—excuse me, go head.

Mr. BRECKINRIDGE. I am not talking about the low enforcement end.

Mr. DIXON. On request we do backstop legally for the Federal Energy Office and various aspects of such laws as the Economic Stabilization Act.

We are not involved in the administration of the energy policy or receiving complaints or proposing substantive remedies unless a question is raised as to legality or a new statute is needed, whether an Executive order be appropriate or so on.

Mr. BRECKINRIDGE. This is my question.

Mr. DIXON. We are not the right persons to ask about the substantive aspects of the energy policy that is developing. In questions about inequities and allocations or insufficiencies, we don't deal with that matter. Most of our backstop of a legal nature comes at the level of making regulations or at the outset in terms of drafting the legislation rather than in any policy application to a particular situation.

Mr. BRECKINRIDGE. Let me come around again.

Where in the executive branch does responsibility for correcting the conditions complained of—if they are indeed correctible in equity—where does that responsibility center?

Mr. DIXON. The point of inquiry concerning the effectiveness of our present combined program of wage-price control is in the Cost of Living Council, the oil allocation program, and other energy matters in the Energy Office. Mr. Simon is in charge of that.

Mr. JAFFE. If you are talking about a situation that might apply to these truckers because some may not be covered or some may not benefit from this, or that they may not be covered under the Interstate Commerce Act, for example, it would seem to me the departments that might have some direct relationship to that kind of activity might be the Department of Transportation or the Commerce Department, in which case OMB, if they were organizing this, would probably ask them to prepare any necessary legislation.

Mr. BRECKINRIDGE. I think you are getting to my question. I don't know whether you have given me the answer I would like. I think what I am saying is witnesses for the ICC this morning said this is helpful but this does not solve the problem. That is what I heard them say.

That means also DOT does not solve the problem and maybe someone does not and I was looking at Justice as the umbrella that looks at all aspects of the problem.

Mr. JAFFE. No; we don't, we try to keep ourselves in the area of litigators and to give advice to the department when they request it.

We comment on legislation that has been introduced at the request of the appropriate committee and in those areas we comment on areas of legality, areas of whether or not or how it affects existing law. We express our comments on whether it is good or bad as far as we are concerned.

Mr. BAISE. It's the Office of Management and Budget that is the umbrella group you are looking for.

Mr. DINGELL. The Chair wishes to say the time of my good friend has expired.

Are there any other questions of the panel?

We appreciate your testimony and appreciate your kindness in being with us.

The hearing is adjourned.

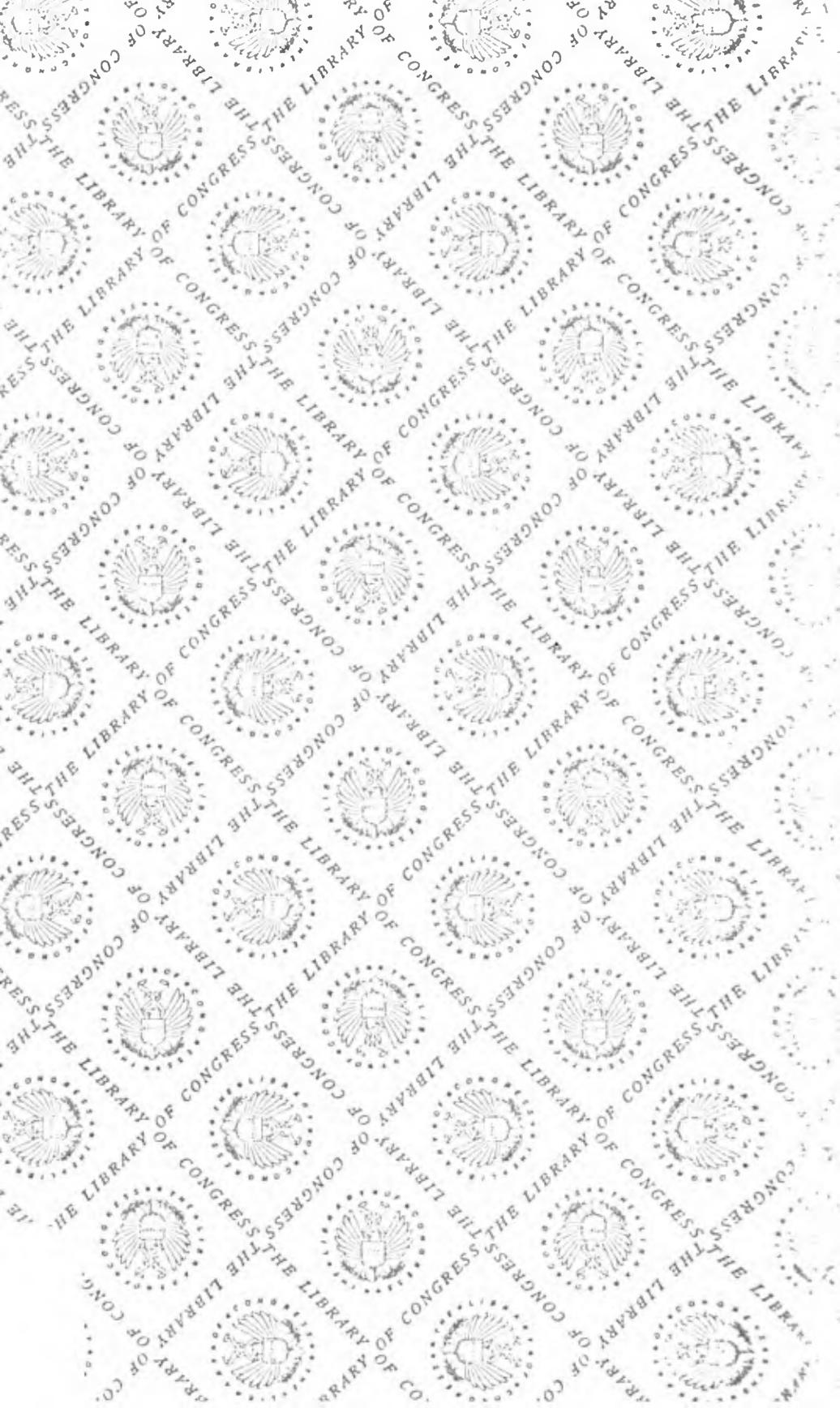
[Whereupon, at 6:10 p.m. the hearing was adjourned.]

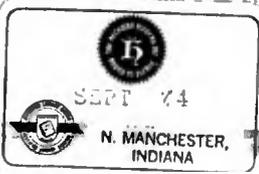


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