

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**PETITION FOR RULEMAKING TO ADOPT RULES GOVERNING PRIVATE  
RAILCAR USE BY RAILROADS**

**Docket No. EP 768**

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**REPLY COMMENTS OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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## EXHIBITS

- Exhibit 1: Hearings before a Subcommittee of the Committee on Interstate &  
Foreign Commerce, United States Senate, Eighty-fourth Congress,  
Second Session, on S. 2770 (1956) (partial hearing transcript)

## INTRODUCTION

Norfolk Southern Railway Company (“NS”) respectfully submits these Reply Comments in response to comments filed in this proceeding and joins the Reply Comments of the Association of American Railroads (“AAR”) in full.

The Petition filed by the North American Freight Car Association, The National Grain and Feed Association, The Chlorine Institute, and The National Oilseed Processors Association (collectively, “Petitioners”)<sup>1</sup> should be dismissed. As, NS, the AAR, and other commenters have shown, no party has offered any actual evidence of an industry-wide problem with car supply justifying Board regulation under § 11122. This alone should end this proceeding.

There are several other important reasons to dismiss the Petition and close this docket. As NS explained in its Comments, the Board does not have the authority to promulgate the rule (or anything like it) proposed by Petitioners, and, as NS explains herein, no commenters show otherwise. NS has also established, with the verified statement of Mr. Rodney Moore, that the proposed rule would create incentives that would lead to poorer service, higher rates, and harm to rail customers, and would be impracticable to implement, all of which remains true.

In these Reply Comments, NS briefly makes two points in response to the comments filed in this proceeding. Part I shows further evidence of what NS and other commenters have argued—that the proposed rule is about regulating *transportation service standards*, a topic the Board is not authorized to regulate under 49 U.S.C. § 11122. Part II explains why the Board does not have authority to adopt the proposed rule under the compensation provision of § 11122, either.

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<sup>1</sup> Petition for Rulemaking, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768 (filed July 26, 2021).

**I. COMMENTERS MAKE CLEAR THAT THE PROPOSED RULE IS ABOUT REGULATING TRANSPORTATION SERVICE, WHICH CANNOT BE REGULATED UNDER § 11122.**

As NS explained in its Comments, Petitioners (and other commenters) seek to shoehorn the proposed rule into the limited authority of 49 U.S.C. § 11122 by equating the word “use” in § 11122 (and § 10102) with the *transportation service* related to private railcars.<sup>2</sup> This argument ignores the history of § 11122, which makes clear that phrases like “efficient use,” “arrangement for the use,” or “used *in* the transportation” are referring to how the national car *supply* is utilized—not the efficiency of transportation service—and do not authorize the Board to regulate transportation service standards (including transportation service quality or speed) under § 11122.<sup>3</sup>

As the D.C. Circuit has explained, “the congressional purpose behind section 11122 [is] *encouraging an appropriate supply of cars*” such that the Board cannot regulate pursuant to § 11122 where, as here, the requested action “[i]s not required to ensure an adequate supply [of railcars].”<sup>4</sup> **No commenter can show evidence**

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<sup>2</sup> See, e.g., Opening Comments of Petitioners, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768, at 12 (filed June 30, 2022) (“Petitioners’ Comments”); Comments of the U.S. Department of Agriculture, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. 768, at 3–4 (filed June 30, 2022) (“USDA Comments”); Comments of The American Chemistry Council, the Corn Refiners Association, and The Fertilizer Institute, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768, at 8–11 (filed June 30, 2022) (“Coalition Associations Comments”).

<sup>3</sup> 49 U.S.C. §§ 11122, 10102 (emphasis added); see Comments of Norfolk Southern Railway Company, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768, §§ I.A–B (filed June 30, 2022) (“NS Comments”).

<sup>4</sup> *LO Shippers Action Comm. v. ICC*, 857 F.2d 802, 804–05 (D.C. Cir. 1988) (emphasis added).

**of a private railcar supply problem here, and the Coalition Associations even *admit* that there is no car supply problem—stating that, for the most part, shippers have fleets sufficient to handle their traffic.**<sup>5</sup>

Tellingly, the parties who support the proposed rule make clear that *this proceeding is about regulating transportation service, not car supply*. For example, the United States Department of Agriculture (“USDA”) argues that the proposed rule is warranted because of concerns regarding rail *transportation service* disruptions; the purported need to enhance incentives for railroads to provide *quality service*; and complaints that shippers cannot negotiate the *service* commitments they want.<sup>6</sup> Likewise, other commenters argue that the proposed rule is needed because contractual *service* commitments are not available<sup>7</sup> or because of delayed rail transportation *service*.<sup>8</sup> In fact, *no commenter has provided any*

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<sup>5</sup> Coalition Associations Comments at 10 (stating that it is a “fact that most shippers maintain [] fleets that are sufficient to handle their traffic”); *see generally* Association of American Railroads’ Reply Comments, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768 (filed Sept. 8, 2022) (“AAR Reply Comments”).

<sup>6</sup> USDA Comments at 2.

<sup>7</sup> Coalition Associations Comments at 6–8; American Fuel & Petrochemical Manufacturers Comments, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768, at 3, 10–11 (filed June 30, 2022) (“AFPM Comments”); Petitioners’ Comments at 11.

<sup>8</sup> Coalition Associations Comments at 6–8; AFPM Comments at 3, 10–11; Petitioners’ Comments at 11.

evidence of any kind of a car supply problem, much less an industry-wide car supply problem.<sup>9</sup> This alone must result in the Board dismissing this proceeding.<sup>10</sup>

These commenters make clear that, as in *Atchison, Topeka & Santa Fe Railway Co. v. ICC*, 607 F.2d 1199 (7th Cir. 1979), the proposed rule is about remedying purported “deficiencies in Railroad Freight service.”<sup>11</sup> 607 F.2d at 1205. And, as the Seventh Circuit explained, that is not a topic the Board can regulate under § 11122. *Id.*

## **II. THE BOARD DOES NOT HAVE AUTHORITY TO ADOPT THE PROPOSED RULE, INCLUDING UNDER ITS COMPENSATION AUTHORITY IN § 11122.**

The United States Department of Agriculture (“USDA”) mistakenly asserts that the compensation provision of § 11122 authorizes the Board to “encourage the

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<sup>9</sup> See generally AAR Reply Comments (explaining lack of evidence of any car supply issue in more detail).

<sup>10</sup> See *LO Shippers Action Comm.*, 857 F.2d at 804–05; *infra* § II; see also *Illinois Terminal R.R. Co. v. United States*, 541 F.2d 201, 206 (8th Cir. 1976) (“*Illinois Terminal*”) (explaining that when an incentive charge was authorized by the statute, the agency was required to “find that there is indeed an inadequate car supply” before “establish[ing] a rule, regulation, or practice aimed at alleviating car shortage” under § 11122(b)); *LO Shippers Action Comm. v. Aberdeen & Rockfish Ry. Co.*, ICC Docket No. 39117, 1987 WL 99199, at \*7–8 (Aug. 12, 1987) (“*Aberdeen & Rockfish*”) (stating that, “[c]learly, Congress does not expect us to ignore the existence of an already adequate or excessive fleet” in regulating under § 11122).

<sup>11</sup> While some commenters bring up the idea that the proposed rule is needed to “compensate” private railcar owners, that is baseless. See, e.g., AFPM Comments at 5; USDA Comments at 4–5. Private railcar owners are already sufficiently compensated, as explained by the AAR. See Association of American Railroads’ Response to Request for Comments, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*, STB Docket No. EP 768, at 21–23 (filed June 30, 2022) (“AAR Comments”). In addition, and as explained *infra* in Part II, the legislative history of the compensation authority in § 11122 makes clear that Congress has not authorized the Board to impose monetary penalties based on transportation service metrics as part of its car service compensation authority.

efficient use of freight cars through compensation paid for the cars.”<sup>12</sup> That is incorrect. In fact, USDA’s argument is directly contradicted by the history of § 11122, as well as agency and federal court precedent.

In its current form, § 11122(a)(1) authorizes (but does not require)<sup>13</sup> the Board to regulate “the compensation to be paid for the use of a locomotive, freight car, or other vehicle,” and subsection (b) further qualifies this authority by requiring such compensation to be “determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost[,] giving consideration to current costs of capital, repairs, materials, parts, and labor,” as well as “the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.” 49 U.S.C. §§ 11122(a)(1), (b). As is obvious from the plain language of the statute, the quality of transportation service is not relevant to determining the rate of compensation under § 11122. But in case there is any doubt, the history of the compensation element of § 11122 makes clear that the Board does not have authority to impose any kind of incentive charge or monetary penalty scheme like the one proposed in this proceeding.

Like § 11122 itself, the compensation provision of § 11122 has a long and telling history. As discussed in more detail below, prior to 1966, the ICC did not have authority to impose any kind of incentive charge under § 11122 (as previously codified), including under its compensation authority. In 1966, Congress authorized the ICC to impose an “incentive element or elements” in the compensation scheme

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<sup>12</sup> USDA Comments at 3.

<sup>13</sup> *Aberdeen & Rockfish*, 1987 WL 99199, at \*5 (“the Commission’s mandate to set allowances in the first place is clearly discretionary. Section 11122 says that the regulations ‘may include’ (emphasis added) the compensation to be paid. Thus, the agency is not required to prescribe compensation for any type of car.”).

that would “contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense,”<sup>14</sup> but the Commission was prohibited from applying any such incentive element without first investigating and finding “that there [was] indeed an inadequate car supply.”<sup>15</sup>

However, this authority to impose an “incentive element” in the compensation scheme was unsuccessful and ultimately repealed in its entirety in the Staggers Act of 1980, never to return.

As a result, Congress’s intent is clear: Today, the STB does not have the authority under § 11122 to use its compensation authority as a regulatory tool to incentivize behavior. In addition, because the “incentive element” authority introduced in 1966 has been repealed by Congress, the pre-1966 agency and federal court precedent prohibiting the agency from using its compensation authority under § 11122 as a regulatory tool is again applicable.

That precedent is on all fours with the Congressional intent expressed in the current version of § 11122: the STB is not authorized to use its compensation authority under § 11122 as a regulatory tool to incentivize *any* behavior—even the efficient utilization of car supply—*much less to regulate transportation service*.

**A. Prior to 1966, the Agency Did Not Have Authority to Use Its Compensation Authority as a Regulatory Tool.**

In the 1947 decision, *Palmer v. United States*, a three-judge federal district court considered the very argument USDA now makes: “whether the statutory

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<sup>14</sup> Pub. L. No. 89-430, 80 Stat. 168 (1966) (amending 49 U.S.C. § 1(14)(a) of the Interstate Commerce Act).

<sup>15</sup> *Illinois Terminal*, 541 F.2d at 206 (quoting *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742 (1971)).

authority to establish ‘compensation for use’ empowers the Commission to fix [compensation] at such amounts, regardless of the costs of ownership, maintenance, and operation, as in its judgement will operate upon non-owning users of cars *to promote greater efficiency in that use.*”<sup>16</sup> The federal judges concluded:

We think that the correct answer to the question as above-phrased is in the negative. *The specific power to fix compensation for the use of cars is not coextensive with the general power to regulate the use of cars.* While the determination of proper compensation is a phase of the regulation of use, it is a specific power with definite characteristics and limitations. It is not an elastic concept adaptable in amount for use for other regulatory purposes.

... [T]he Commission has never heretofore in thirty years attempted to include in the per diem charge any extra amount intended for a purely regulatory purpose.

... In [addition], in its ordinary and generally-accepted meaning, ‘reasonable compensation’ does not include amounts in addition to actual remuneration. The term is a widely-used and familiar expression .... *‘Reasonable compensation for use’ does not convey a prohibitory or regulatory idea.*

... The statutory plan is that the interchange and return of cars are to be controlled by regulations designed and directed to that purpose, — operating regulations. And the rentals for cars, under whatever system of use and return may be established by the Commission, are to be reasonably compensatory for that use, and no more. *The simple expression ‘compensation for the use of cars’ does not describe a process for solving the complex problems of car usage and supply. It neither describes nor authorizes a financial pincers with which to squeeze non-owning railroads.* It does not permit the Commission to avoid the difficulties of the car supply problem by simply placing the non-owning roads between an upper millstone of unshipped freight on their lines and the nether millstone of financial penalties. If the movement of empties to the owners is in the public interest for the time being the Act provides for that accomplishment by a direct requirement to that effect.

*Id.* at 67–69 (emphasis added).

In addition, the court in *Palmer* firmly rejected the idea that using the compensation authority for incentive purposes might be permissible:

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<sup>16</sup> *Palmer v. United States*, 75 F. Supp. 63, 67 (D.D.C. 1947).

Much emphasis is laid by the Commission and the United States upon the proposition that the per diem rental charge has the same essential qualities as has demurrage, the power to prescribe which as an emergency matter was sustained in the Iversen case. But it seems to us that the differences are far greater than the similarities. 'The purpose of demurrage charges,' the Supreme Court said in *Pennsylvania R. Co. v. Kittaning Iron & Steel Mfg. Co.*, 'is to promote car efficiency by penalizing undue detention of cars.' Demurrage is arranged to fit that purpose, with free time allowances sufficient to permit reasonably prompt unloading. It applies directly and exclusively to the objective sought, i.e., the prevention of detention of cars beyond a reasonable time. Both in nature and in purpose demurrage is a regulatory measure. 'Reasonable compensation for use' has none of those decisive characteristics which the Court found in demurrage charges.

... [I]n *Chicago, R. I. & P. Ry. Co. v. United States*[,] ... [t]he [U.S. Supreme] Court held ... that the per diem is neither more nor less than compensation for the use of property ... [Even in the dissent,] Justice Stone nowhere indicated that a per diem might be fixed in amount as a prohibitory or regulatory measure, without regard to the limits of fair remuneration or fair compensatory charge, or that such a per diem might be applied indiscriminately to all use, whether efficient or the opposite.

*Id.* at 73 (internal footnotes omitted).

As if it were considering the USDA's very argument in this proceeding, the court in *Palmer* also rejected the idea that "compensation has full regulatory characteristics because it is included by the statute among the regulatory powers." *Id.* In this regard, the court explained that while it was "perfectly true that the prescription of compensation is a species of regulation, and is included by the statute as such, ... it does not follow that it is a substitute for other sorts of regulation, or is usable for other regulatory purposes." *Id.* The court reasoned that, for the agency to be able to use its compensation authority "for a regulatory purpose, and quite apart from full remuneration for ownership" would require the court "to find [that] in [the] plain language of the Congress," which the court "d[id] not find." *Id.* at 74. Ultimately, the *Palmer* court held "that the statutory authority to fix reasonable compensation for the use of cars does not empower the

Commission to establish, solely for general car-service regulatory purposes, rentals in excess of any purported reasonable recompense to the owner.” *Id.* at 75.

*Palmer* defined the agency’s compensation authority prior to Public Law 89-430 (1966), which authorized the “incentive element.”<sup>17</sup> Now, with the “incentive element” authority repealed and rejected by Congress since 1980, *Palmer* again defines the agency’s compensation authority.<sup>18</sup>

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<sup>17</sup> Even post-1966, the ICC continued to recognize *Palmer*’s logic that its authority to regulate compensation under § 11122 (then § 1(14)) was not coextensive with its power to address “car shortages” and was “not an elastic concept adaptable in amount for use for other regulatory purposes.” *In the Matter of Compensation for Transportation Service Performed Pursuant to Pfahler’s Car Distribution Directions*, 332 I.C.C. 554, 562–63 (1968) (quoting *Palmer v. United States*, 75 F. Supp. at 67).

<sup>18</sup> While it is true that the current version of § 11122 includes the sentence, “[t]he regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars,” 49 U.S.C. § 11122(a), which was not included in the pre-1966 version of § 11122 (as previously codified), and thus not considered by the *Palmer* court, that sentence does not in any way undermine the logic and “enviable clarity” of Judge Prettyman in *Palmer. Southern Ry. Co. v. United States*, 306 F. Supp. 108, 113 (E.D. Va. 1969). In fact, the statutory language in §§ 11122(a)(1) and (b) regarding compensation support *Palmer*’s holding. In particular, § 11122(a)(1) limits “compensation” to “the compensation to be paid for the use of a locomotive, freight car, or other vehicle,” *id.* (emphasis added), which is clearly referring to “recompense to the owner” and not some broader regulatory tool. *Palmer*, 75 F. Supp. at 75. Moreover, the factors the Board must consider if it sets compensation are clearly meant to determine a proper “recompense to the owner” in light of market factors that would otherwise set a market-driven rate, consistent with the Staggers Act’s emphasis on allowing market-based car hire rates. *Id.*; 49 U.S.C. § 11122(b); see *Gen. Am. Transp. Corp. v. ICC*, 872 F.2d 1048, 1057 (D.C. Cir. 1989) (“As the Commission stated in *LO Shippers Action Comm.*, ‘allowing market based car hire returns, instead of prescribing fixed returns, best accommodates the various factors [the Commission is] required by [section 11122 of the Act] to consider.’ 4 I.C.C.2d [1, 14 (1987)].”); *LO Shippers Action Comm.*, 857 F.2d at 807–08 (D.C. Cir. 1988) (noting that intent of the Staggers Act was that “marketplace decisions govern the railroad industry and its relationship with shippers,” including where “[t]he legislative history ... relate[d] to section 224 of the Staggers Act, which dealt solely with compensation-related matters”).

**B. Prior to 1966, Congress Rejected At Least Two Bills to Authorize the Agency to Use Its Compensation Authority as a Regulatory Tool.**

It was the *Palmer* decision that led ICC commissioners in 1956 to ask Congress for authority to use its compensation authority as a regulatory tool (but only under its broader emergency powers under § 11123, previously § 1(15)).<sup>19</sup> But Congress rejected two different bills that would have given the agency authority to impose a penalty charge, including a reverse demurrage scheme, on carriers for delays. In particular, at hearings before a Senate subcommittee of the Committee on Interstate & Foreign Commerce,<sup>20</sup> Commissioner Clarke explained that the agency “lack[ed] the statutory authority to order penalty per diem charges,” including reverse-demurrage-type charges that shippers wanted.<sup>21</sup>

As a result, the ICC “proposed specific legislation, Senate bill 2770, to ... give the Commission authority to compel railroads ... to move and handle freight cars more expeditiously” through assessment of special penalty charges “in emergencies just as [can be done with] the demurrage rates to the shipper.”<sup>22</sup>

Yet, even in the context of the agency’s more expansive emergency authority in then-section 1(15) (now § 11123), *Congress rejected S. 2770*, which was never enacted.

Moreover, at the same hearing, Senator Francis Case of South Dakota highlighted another “reverse demurrage” bill he introduced, S. 3509, which he

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<sup>19</sup> See Exhibit 1, Hearings before a Subcommittee of the Committee on Interstate & Foreign Commerce, United States Senate, Eighty-fourth Congress, Second Session, on S. 2770, at 5 (1956) (partial hearing transcript).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 7, 12.

explained would “introduce another feature in the authority which the [ICC] would have,” namely the authority to impose a reverse demurrage charge when a shipper could “make a bona fide requisition and ... have cargo awaiting the cars” and the carrier failed to deliver the cars within “10 days.”<sup>23</sup> *Congress also rejected S. 3509*, which was never enacted.

**C. The ICC’s Authority, Granted in 1966, to Utilize Incentive Elements in its Compensation Authority Was Not Successful and Was Repealed in 1980, Never to Return.**

In 1966, Congress gave the ICC authority to use an “incentive element” to incentivize the “efficient utilization and distribution of cars” as part of its compensation authority; but, even so, that authority was limited by the requirement that the ICC first investigate and find that there was an “inadequate supply” of any cars to which such an incentive element was applied.<sup>24</sup> (Thus, even under the now-repealed version of § 11122, Petitioners’ proposed rule would fail, as there is zero evidence in the record of an inadequate supply of any railcars.)

However, the incentive element experiment did not go so well, as the ICC made clear in August 1980, when it explained that the incentive element “has had undesirable consequences on railroad resource allocation and operations, including

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<sup>23</sup> *Id.* at 34–35.

<sup>24</sup> *See Illinois Terminal*, 541 F.2d at 205–06; *see also* 49 U.S.C. § 11122(b)(2) (1978) (“The Commission may increase a rate of compensation ... by an incentive element only when the Commission finds that the supply of a type of freight car is inadequate and an incentive element will compensate freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and national defense”); *Use of Incentive Per Diem Funds*, 364 I.C.C. 181, 182 (1980) (“Under the IPD [incentive per diem] statute, 49 U.S.C. 11122(b) ..., IPD can only be earned and spent on cars found to be in inadequate supply.”)

equipment utilization”<sup>25</sup>—precisely the points NS made in its June 30, 2022, Comments in this proceeding and the accompanying Verified Statement of Rodney Moore.<sup>26</sup> The ICC explained that its attempt to use the incentive element required constant micromanaging of car hire compensation rates, including agency monitoring of car supply levels for various types of railcars and multiple adjustments and readjustments of the incentive element throughout the 1960s and 1970s as supply trends went up and down.<sup>27</sup> After all of this work, the ICC concluded “that the [incentive per diem] program imposes substantial additional costs on the railroad industry and its shippers,”<sup>28</sup> just as commenters in this proceeding who oppose the proposed rule have explained.<sup>29</sup> The Board should take particular note of the ICC’s hard-won wisdom and not repeat past mistakes.

In any event, the Staggers Act of 1980 revoked the agency’s authority to use any such incentive element in its compensation authority, and it remains revoked—leaving the Board with no choice but to dismiss this proceeding for obvious lack of authority. The deregulatory emphasis of the Staggers Act saw no place for the type of car service micromanaging the ICC itself concluded had failed as a regulatory matter. Indeed, Congress emphasized that market-based compensation for car service should “govern the railroad industry”<sup>30</sup> instead of artificially imposed

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<sup>25</sup> *Elimination of Incentive Per Diem Charges*, 364 I.C.C. 116, 116 (1980).

<sup>26</sup> See NS Comments at 17–24; *id.*, Verified Statement of Rodney Moore.

<sup>27</sup> *Elimination of Incentive Per Diem Charges*, 364 I.C.C. at 117–19.

<sup>28</sup> *Id.* at 120.

<sup>29</sup> See, e.g., NS Comments at 17–24; AAR Comments at 26, 33, 37.

<sup>30</sup> See Staggers Rail Act of 1980, Report of the Committee on Conference on S. 1946, at 117–18 (1980) (“The House amendment repeals section 11122(b)(2) which allowed the Commission to impose incentive per diem rates ... Conference [report] adopts ... House amendment [in that regard]. ... The conferees intend that marketplace

incentive charges, which, as the ICC learned the hard way, “had undesirable consequences” and “impose[d] substantial additional costs on the railroad industry and its shippers.”<sup>31</sup>

Thus, the USDA is wrong on all accounts when it opines without any support that the Board has authority to adopt the proposed rule under its compensation authority in § 11122 and that “reciprocal demurrage would ... better incentivize railroads to use shipper-owned cars efficiently.”<sup>32</sup> The ICC’s lived experience contradicts the latter idea,<sup>33</sup> and the authority granted to the Board in § 11122 prohibits both. Congressional intent as well as agency and federal court precedent have clearly established that the Board has no such authority to use a monetary charge to “incentivize railroads to use shipper-owned cars efficiently,”<sup>34</sup> as proposed by Petitioners in this proceeding. With no authority to adopt the proposed rule or anything like it, the Board should move no further in the rulemaking process and dismiss this proceeding outright.

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decisions govern the railroad industry and its relationship with shippers. Indeed, this policy is enunciated in the rail transportation policy.”).

<sup>31</sup> *Elimination of Incentive Per Diem Charges*, 364 I.C.C. at 116, 120.

<sup>32</sup> USDA Comments at 5.

<sup>33</sup> *See Elimination of Incentive Per Diem Charges*, 364 I.C.C. 116 (1980); *see also Gen. Am. Transp. Corp. v. Indiana Harbor Belt R.R. Co.*, 3 I.C.C.2d 599, 615 (1987) (“the fact that car allowances do not fully insulate car owners from adverse market conditions does not change the fact that the railroads’ contribution to coverage of private car ownership costs should come directly through allowances rather than indirectly through devices ... that constitute inefficient and inequitable cross subsidies”); *Aberdeen & Rockfish*, 1987 WL 99199 at \*8 (rejecting idea of regulatory action that would result in freight rate increases not tied to demand (like the proposed rule in this proceeding), which would go against “the efficient use of freight cars”).

<sup>34</sup> USDA Comments at 5.

## CONCLUSION

There is no justification or authority for the proposed rule. The proposed rule seeks transportation service guarantees by regulatory fiat, which is not authorized under the Board's governing statute nor justified by any evidence in this proceeding. For the reasons herein and in NS's Comments, as well as those in the Comments and Reply Comments of the AAR, the Board should terminate this proceeding.

Respectfully submitted,

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Dated: September 8, 2022

# **EXHIBIT 1**

**Hearings before a Subcommittee of the  
Committee on Interstate & Foreign  
Commerce, United States Senate, Eighty-  
fourth Congress, Second Session, on S. 2770  
(1956) (partial hearing transcript)**

# AMENDING INTERSTATE COMMERCE ACT (TO ALLEVIATE FREIGHT CAR SHORTAGE)

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## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE UNITED STATES SENATE EIGHTY-FOURTH CONGRESS SECOND SESSION ON S. 2770

A BILL TO AMEND SECTION 1 (15) OF THE INTERSTATE  
COMMERCE ACT, SO AS TO AID IN ALLEVIATING SHORT-  
AGES OF RAILROAD FREIGHT CARS DURING PERIODS OF  
EMERGENCY OR THREATENED EMERGENCY, AND FOR  
OTHER PURPOSES

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MARCH 29, MAY 7 AND 8, 1956

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## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

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---

### SUBCOMMITTEE ON FREIGHT CAR SHORTAGE

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A. S. MIKE MONRONEY, Oklahoma

ANDREW F. SCHOEPPPEL, Kansas

FRANK L. BARTON, *Transportation Counsel*

NOTE.—Hearings were held on Freight Car Shortage on July 27 and 28, 1955.

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# AMENDING INTERSTATE COMMERCE ACT (To Alleviate Freight Car Shortage)

THURSDAY, MARCH 29, 1956

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
SUBCOMMITTEE ON FREIGHT CAR SHORTAGE,  
Washington, D. C.

The special subcommittee met, pursuant to notice, at 10 a. m., in room G-16, United States Capitol, Hon. Andrew F. Schoeppel presiding.

Present: Senator Schoeppel and Senator Frear.<sup>1</sup>

Senator SCHOEPPEL. Notices of this hearing have been given.

Let the record show that we are proceeding this morning on S. 2770. (S. 2770 is as follows:)

[S. 2770, 84th Cong., 2d sess.]

A BILL To amend section 1 (15) of the Interstate Commerce Act, so as to aid in alleviating shortages of railroad freight cars during periods of emergency of threatened emergency, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (15) of section 1 of the Interstate Commerce Act, as amended (49 U. S. C., sec. 1 (15)), is amended by striking out "(c)" and "(d)" and inserting in lieu thereof "(d)" and "(e)", respectively, and by inserting immediately after clause (b) of such paragraph a new clause as follows:

"(c) to impose on one or more carriers, when a shortage or threatened shortage of freight cars exists, such charges (in addition to the car-hire, car-rental, or per diem charges, or mileage rates, then in effect) applicable to any type of freight car in any section of the country during such emergency, or threatened emergency, as in the opinion of the Commission are reasonably calculated to relieve such shortage or threatened shortage by promoting the expeditious movement, distribution, interchange or return of freight cars, and the additional charges shall be paid by the carrier using such cars to the owners;"

Senator SCHOEPPEL. Let the record show that Senator Magnuson has been detailed on other official matters. While we are waiting for other witnesses I desire to make a short statement with reference to this hearing.

The bill under consideration, S. 2770, was introduced at the request of the Interstate Commerce Commission.

According to the Commission, section 1 (15) of the Interstate Commerce Act contains the Commission's emergency powers with respect to car service. It does not, however, include authority to direct the assessment of special charges in addition to per diem charges as a means of stimulating prompt action by the carriers in time of car shortages or threatened car shortages.

<sup>1</sup> Staff member assigned to these hearings: Frank L. Barton, transportation counsel.

Under section 1 (14) (a) of the act, the Commission may establish the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, but in *Palmer v. United States* (75 F. Supp. 63 (1947)), a three-judge district court held that the use of the word "compensation" in section 1 (14) (a) precludes the Commission from establishing a per diem charge in excess of any purported reasonable recompense to the owner.

The Commission states that during and since World War II every measure reasonably calculated to extract greater utilization from the existing inventory of freight cars has been adopted by the Commission, one of the most important of these steps being the establishment of greatly stepped-up demurrage charges against shippers and receivers to insure prompt loading and unloading.

These measures, according to the ICC, have been inadequate to cure the problem arising from what is perhaps the most important segment of the cycle of car handling and movement; the phase when the car is in the hands of the carrier. As long as a car is in the hands of the carrier, the Commission claims it has virtually no way to compel prompt action. It further states that the lack of effective means to spur and stimulate railroads into greater activity in times of car shortage or threatened car shortage is the major weakness in the present car-service provisions of the act.

The recommended amendment would, according to the Commission, give it the necessary power, during such emergencies, or threatened emergencies, to induce the railroads to make greater efforts in moving and handling freight cars and may even encourage them to build or purchase their own cars.

In addition to commenting on the bill, witnesses are and were invited to give facts concerning the freight-car shortage generally.

I should like to call attention to some facts concerning freight cars before proceeding with the hearing.

The ownership of freight cars by the class I railroads has decreased steadily over the years. The all-time high in ownership was 2,347,275 cars on January 1, 1926. On March 1, 1955, the figure was 1,729,939 cars. On March 1, 1956, ownership had dropped to 1,696,259 cars, the latest figure available.

Cars are being retired faster than new ones are being installed. For the 12 months ended February 29, 1956, 41,033 new cars were installed by class I railroads; 68,557 cars were retired. Comparable figures for the 12-month period ended February 28, 1955, show 24,424 cars acquired and 69,063 retired.

Currently, the shortage of cars is well ahead of last year. According to the latest figures, the average daily shortage for the week ended March 17, 1956, was 4,606 cars as compared with a shortage of 1,518 cars for the comparable week ending March 19, 1955.

Concerning boxcars, the Association of American Railroads' latest published report dated March 20, 1956, states that—

all classes are in tight supply throughout most of the country at this time with demands increasing daily \* \* \*.

As the period of greatest shortage does not usually occur until October, these reports augur ill for the freight car supply during the coming fall and winter.

Further, it is reported that the Shippers Advisory Board forecast for the second quarter of 1956, to be released March 31, contains an estimate of a 4.6-percent increase over actual carloadings in the same period in 1955. This represents an estimated increase of about 500,000 cars for the second quarter of 1956, or about 40,000 cars a week increase.

It appears that the freight-car shortage may become more severe in 1956 than it was in 1955, hence the necessity, and we think the importance, of this type of hearing that we are beginning today.

I note that we have on our agenda a list of witnesses. At the beginning of the list we have provided for the Senators who desire to testify to appear first.

I note that Senator Wayne Morse, of Oregon, Senator Mike Mansfield, of Montana, Senator Richard Neuberger, of Oregon, are the three first listed. I do not see any of those gentlemen in the room. I understand that Senator Mansfield is detained, as are these other two gentlemen, in some preliminary hearings before the committees of the Senate this morning. So in that case I think we should proceed because we have quite a long list.

We will start with Mr. Owen Clarke, a member of the Interstate Commerce Commission, if he is ready.

If you will come forward and any associates that you have with you, at the conclusion of your testimony we will bring on the Senators as they come in.

#### STATEMENT OF OWEN CLARKE, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

MR. CLARKE. Mr. Chairman, my name is Owen Clarke and I am Chairman of Division 3 of the Interstate Commerce Commission and the Commissioner to whom the Bureau of Safety and Service reports. This is the Bureau which administers the car-service provisions of the Interstate Commerce Act.

While many different factors contribute to freight-car shortages, the two principal causes are inadequate car ownership and failure to efficiently utilize existing equipment. The Commission is firmly of the view that enactment of S. 2770 will help materially in reducing the crippling economic impact of recurring car shortages. Specifically, we believe it will encourage the acquisition of a more adequate car supply and promote expeditious movement and handling of freight cars.

Thirty years ago class I railroads owned and controlled 2,427,026 freight cars. That figure varies slightly from the one that you just quoted, Senator. Ours includes refrigerators.

Since then the ownership has progressively declined from year to year, with few exceptions, reaching the comparatively low level of 1,774,616 cars on January 1, 1956. A statement showing ownership, retirements, and new cars installed for the years 1926-55, inclusive is attached to this statement.

Senator SCHOEPPLE. Let the record show that this tabulation will become a part of your statement.

(The document referred to above is as follows:)

*Statement of total freight-car ownership of class I railroads and railroad-owned and contracted refrigerator cars for years 1926-55, inclusive*

|           | Freight-car ownership | Freight cars retired | New freight cars installed |             | Freight-car ownership | Freight cars retired | New freight cars installed |
|-----------|-----------------------|----------------------|----------------------------|-------------|-----------------------|----------------------|----------------------------|
| Jan. 1—   |                       |                      |                            | Jan. 1—Con. |                       |                      |                            |
| 1926..... | 2,427,026             | 93,534               | 91,797                     | 1942.....   | 1,783,539             | 18,349               | 63,009                     |
| 1927..... | 2,425,289             | 84,333               | 66,932                     | 1953.....   | 1,828,199             | 19,298               | 28,708                     |
| 1928..... | 2,407,888             | 81,820               | 49,304                     | 1944.....   | 1,837,609             | 27,088               | 40,392                     |
| 1929..... | 2,375,372             | 102,306              | 83,705                     | 1945.....   | 1,850,903             | 43,633               | 38,987                     |
| 1930..... | 2,356,771             | 72,623               | 76,959                     | 1946.....   | 1,846,257             | 61,001               | 40,377                     |
| 1931..... | 2,361,107             | 81,789               | 12,662                     | 1947.....   | 1,825,630             | 71,384               | 63,362                     |
| 1932..... | 2,291,980             | 71,169               | 2,968                      | 1948.....   | 1,817,611             | 81,659               | 102,737                    |
| 1933..... | 2,223,779             | 111,382              | 1,879                      | 1949.....   | 1,838,689             | 90,348               | 84,669                     |
| 1934..... | 2,114,326             | 141,493              | 24,103                     | 1950.....   | 1,833,010             | 76,179               | 42,067                     |
| 1935..... | 1,996,936             | 104,597              | 8,903                      | 1951.....   | 1,798,898             | 53,028               | 87,727                     |
| 1936..... | 1,901,242             | 112,981              | 43,941                     | 1952.....   | 1,833,597             | 62,240               | 67,420                     |
| 1937..... | 1,832,202             | 89,998               | 75,058                     | 1953.....   | 1,838,777             | 50,123               | 69,394                     |
| 1938..... | 1,817,262             | 67,150               | 18,517                     | 1954.....   | 1,858,048             | 71,858               | 30,562                     |
| 1939..... | 1,768,629             | 68,688               | 24,528                     | 1955.....   | 1,816,752             | 73,491               | 37,509                     |
| 1940..... | 1,724,469             | 61,483               | 65,545                     | 1956.....   | 1,774,616             | -----                | -----                      |
| 1941..... | 1,728,531             | 25,494               | 80,502                     |             |                       |                      |                            |

Mr. CLARKE. There is at present, a widespread need for boxcar service. In this connection it is worth noting that ownership of this type of equipment has decreased from 743,728 in 1945 to 716,764 on January 1, 1956. Also, during the same period ownership of gondolas, hoppers, and covered hoppers has dropped from 868,982 to 850,588. This, of course, has only served to aggravate the problem.

Senator SCHOEPPPEL. Senator MORSE, we thought we would start, as we have a long list. Inasmuch as Mr. Clarke has just completed his first page—

Senator MORSE. Let him finish. I will stay through the hearings anyway. I appreciate your courtesy. I will confer with you shortly about the schedule, Mr. Chairman, because we have quite a few witnesses here from Oregon who have come a long way, and I am very much concerned about having them heard, and I am worried about the schedule of the committee.

As you know, we first planned this committee on the 20th and 21st and we didn't know when we postponed it at that time that we were going to have an Easter holiday starting tonight. What I am concerned about is that we might not be able to get through with these witnesses today. I don't know what the committee's pleasure is as to tomorrow. Will there be anybody here who can make the record on these witnesses tomorrow?

Senator SCHOEPPPEL. Off the record.

(Discussion off the record.)

Senator SCHOEPPPEL. You may proceed.

Mr. CLARKE. Studies conducted in 1952 by the Defense Transport Administration indicated that 1,935,500 cars would be needed by January 1, 1956, to meet the anticipated needs of shippers. This exceeded actual car ownership on that date by 161,000. If the 147,320 freight cars on order at the close of 1955 could be built and put in service immediately, there would still be a shortage of 14,000 units in estimated ownership requirements.

Unfortunately, at the present low production rate of less than one-half of shop capacity, due primarily to the inability to obtain sufficient steel, it will take at least 2 years to complete construction of all the cars for which orders have been placed.

In the meantime, if the railroads continue to retire old cars from service at the rate of 72,600 per year, as they did in 1954 and 1955, there will be little or no net gain in the total fleet in the foreseeable future.

Senator SCHOEPEL. Mr. Clarke, you mentioned a shortage of steel. Let's assume there would be no shortage of steel.

Mr. CLARKE. If all of the steel was available that could be used, they could immediately double production. The plant facilities are there to turn out at least 10,000 cars a month, whereas at the present rate it is something under 5,000.

Under these circumstances, plus the fact that carloadings are running 7½ percent above last year and with prospects for a continuing high level of traffic, it must be acknowledged that the 1956 car shortage will be at least as serious, if not more so, than was experienced a year ago.

To remedy the situation action in two important directions is urgently needed. First, the steel industry must be persuaded that it is in the public interest to increase their allotment of materials to a sufficient level to enable the car-building shops to operate at full capacity.

Secondly, an incentive should be established which will cause railroad management to continue ordering new freight cars at an accelerated pace.

Speaking before the National Association of Shippers Advisory Boards in Pittsburgh, Pa., on October 13, Mr. William T. Faricy, president of the Association of American Railroads, stated that to overcome the present deficit in freight car ownership will require the installation of an average of 75,000 new cars in each of the next 5 years. We consider this to be a very conservative estimate.

Car shortages occur because a few railroads consider it cheaper to rent cars than to own them. With the earning value of an average freight car many times the current per diem charge of \$2.40, the temptation is strong among certain railroads, and especially those having little or no ownership, to appropriate the equipment of other carriers for their own use.

So long as a railroad can fulfill its common carrier responsibility with rented equipment, it has no economic incentive to provide its fair share of an adequate car supply. The inevitable result is that an adequate supply is never acquired. We believe that the best long range cure for this unsatisfactory condition is a penalty per diem charge that will furnish a pecuniary spur to deficit railroads to acquire sufficient cars at least to take care of their own loading obligations.

During the car shortage of 1947 the Commission endeavored to meet the problem by imposing penalty per diem charges. However, a three-judge district court in *Palmer v. U. S.* (75 Fed. Sup. 63), the case to which you referred in your opening statement, Mr. Chairman, held that the Commission lacked the statutory authority to take such action.

Specifically, the court found that section 1 (14) authorizing the Commission to fix reasonable compensation for the use of cars, does not empower it to establish, solely for general car service regulatory purposes, a per diem charge in excess of any purported reasonable recompense to the owner. Among other things, the court said:

The thesis, as the Commission and the Court have explained, has always been that while every road must furnish its share of the total car supply, each may do so by owning or by renting. The burden of renting has been deemed the financial equivalent of owning in this balancing of economic necessities.

I should add that the court did not specifically rule out the possibility that under other provisions of the act the Commission may require railroads to own a sufficient number of cars. Nevertheless, its opinion certainly leaves the matter in doubt. However, the court made it clear that it had no doubt as to the authority of Congress to grant such power to the Commission, for it stated that :

If the language of the statute were plain that car-hire charges could be fixed at prohibitive levels for regulatory purposes, that language would control.

We believe that if the advantages of renting equipment could be made less attractive in times of shortage, there would be greater willingness on the part of every railroad to make its just and equitable contribution to the national car supply.

If the ownership of a fleet of freight cars, adequate even for peak loadings, could be made financially desirable, the problem would eventually solve itself.

It is for this reason that we recommend per diem charges during periods of emergency sufficiently high to provide an incentive for every railroad to own and maintain an adequate fleet of freight cars.

If S. 2770 should be enacted into law, the Commission's first step would be to determine the extent to which railroads, individually and collectively, are deficient in car ownership.

Senator SCHOEPEL. Do you have such a compilation in your office at this time, or within the Commission?

Mr. CLARKE. We don't have one prepared by the Commission, Senator. However, most of the spadework has already been done. The Office of Defense, ODT, prepared one. DTA refined it or brought it up to date during the Korean war. And AAR has a very complete car ownership formula, we understand. So much of the spadework has been done.

Senator SCHOEPEL. Continue please.

Mr. CLARKE. This would involve a comprehensive study of traffic requirements, including the peak loadings on individual lines. Separate studies would be necessary for the various types of equipment, such as box, gondola, hopper, flat, refrigerator, stock, or other special types of cars. Consideration would also be given to the type and flow of traffic and whether the carrier is predominantly an originating, terminating, or bridge line.

Once the Commission had adopted a car ownership formula, it would then be in a position to exert pressure upon deficit railroads to increase their ownership to the prescribed level within a reasonable time or suffer penalty per diem charges in the event of another car shortage.

To illustrate how the proposed law would operate, let us assume that your next-door neighbor habitually borrows your lawn owner. Of course, every time you need it to cut your own grass he is using it. You tolerate this unpleasant condition for a few years and then finally issue an ultimatum. You tell your neighbor that if he does not buy a lawn mower of his own he will have to pay \$10 every time he borrows yours next summer.

The second major objective of the proposed legislation is to promote more expeditious movement, distribution, interchange, and return of freight cars in periods of shortage.

During the past 14 years a variety of measures have been tried, calculated to extract greater utilization from the existing car ownership. For example, 13 times during those years penalty demurrage charges ranging from \$11 to \$44 per day have been ordered.

Inasmuch as a freight car is in the hands of the shipping public approximately 50 percent of its productive life, these punitive measures have been considered justified as a necessary stimulant for securing prompt loading and unloading. It is our view that this is as far as we should go against the shipper and the receiver.

However, the one—and perhaps the most important segment of the cycle of car handling and movement which has resisted practically every solution—is that phase where the car is in the hands of the carrier.

At the present time, in view of the court's decision in *Palmer v. United States* (supra), there is no adequate penalty against the railroads for dilatory and sluggish movement of freight cars and the squandering of car days. The lack of effective means to spur and stimulate railroads into greater efficiency in times of shortage is the major weakness in the present car service provisions of the act.

If the per diem charge for freight cars to the using roads were adjustable in emergencies just as are the demurrage rates to the shipper, it is our opinion that car utilization would be so greatly improved that thousands of additional units would become immediately available for loading.

In order that the double objective of S. 2770 will be clearly understood, we suggest the following amendment to the bill: Insert on page 2, line 7, after the word "by", the following:

encouraging adequate ownership of freight cars by each carrier and by.

While penalty per diem charges would not completely cure car shortages, it is our considered judgment that the bill, as amended, would give the Commission the necessary power, before and during emergencies, to induce the railroads to make greater efforts in moving and handling freight cars. At the same time it would encourage them to build or purchase a more adequate supply, thereby reducing the likelihood of future shortages.

Senator SCHOEPPPEL. What car service orders has the Commission ordered to deal with the freight car situation?

Mr. CLARKE. Last year we issued a series of emergency service orders. The first one dealt or limited the right to partially load a car. It eliminated partial loading.

The second, service order 904, required the railroads to move cars, loaded cars, in line-haul movement within 24 hours. Instead of allowing a lot of cars to accumulate in freight yards they were required to move them out in road haul within 24 hours.

Senator SCHOEPPPEL. What appreciable results did you see from the instant order that you just mentioned?

Mr. CLARKE. Service order 904?

Senator SCHOEPPPEL. Did it help materially?

Mr. CLARKE. It is very difficult to measure with exactness. It immediately improved the handling of freight cars. The results were definite and substantial in our opinion.

That order, among other things, also adopted as ICC orders the car distribution orders that were outstanding and had been issued by the Association of American Railroads. We in effect, by one act, adopted their orders as our own. The reason we did that was because the AAR of course, being a voluntary organization, had no way to enforce their own orders. After we had adopted their orders we policed the car distribution to the best of our ability with a limited number of field agents, service agents, 30 in number. We handled a great many complaints, and then recommended the Department of Justice prosecution against certain railroads for failure to comply.

We had other orders dealing with unloading, restricting partial unloading. We had orders limiting or reducing the amount of free time at ports. All of those orders expire December 31. Most of them will be reissued again this year. The only service order that has been issued so far this year is one to become effective April 9, known as service order 910, which attempts to eliminate circuitous routing and slow schedules, or what we consider to be a waste of car days by certain shippers who attempt to use freight cars for storage purposes.

It specifically prohibits railroads from willfully delaying the movement of freight cars for the purpose of increasing the time of the transit.

Senator SCHOEPPPEL. Of course we have a situation which has been aggravated by the lack of steel that is available, which of course, according to the record, has tightened up appreciably. There is some possibility with the automobile industry being somewhat down, that more steel will be available.

The railroads of course, some of them, will have to build more freight cars because they are taking cars out of service, as you have indicated here, at an alarming rate. I am wondering if you have any opinion as to what the tax amortization program would do?

Mr. CLARKE. We have contended all along that the tax amortization program was a necessary incentive to encourage the railroad industry to produce enough freight cars not only to take care of the normal needs of traffic but to prepare us for any emergency. However, the tax amortization program ran out December 31, 1955. In 1952 a numerical goal of 436,000 cars was set. At the time it was felt that that would be enough to take care of all the cars that ought to be acquired up to June 30, 1954.

But at that time the goal was extended to December 31, 1955, or 18 months more, but the numerical limits of the goal were not changed. Then last fall, November and December, when the railroads ordered cars very heavily, we finally found ourselves over the goal, numerically speaking.

At the present time there are applications for tax amortization covering 59,000 freight cars which exceed the goal. We have recommended to the Office of Defense Mobilization that the goal be lifted to take care of those cars. The reason we make that recommendation is because a number of the applications showed on the face of them that the acquisition of those cars was contingent upon the granting of tax-amortization certificates.

We are very fearful that if the Office of Defense Mobilization does not lift the numerical goal so that those cars already on order can be amortized on an accelerated basis, we are very fearful that there

will be cancellations or orders and there could be as much as 50,000 cars on order canceled out.

Senator SCHOEPEL. I think it would be helpful if you would further elaborate about how many of the 147,320 cars are subject to this rapid amortization program. Was it forty-some-thousand that you mentioned, or 50,000?

Mr. CLARKE. There are 59,000 of the 147,000 for which the granting of tax amortization is in doubt, or not eligible at present unless ODM agrees with us and decides to lift the numerical goal.

Senator SCHOEPEL. Have you made specific recommendations with respect to this?

Mr. CLARKE. Yes, we have. We have made a series of recommendations to the Office of Defense Mobilization and we understand the matter is still under advisement.

Senator SCHOEPEL. Senator Morse, do you have any questions?

Senator MORSE. Yes, sir.

Mr. CLARKE, have there been any prosecutions by the Government under car service order 904, the order requiring rapid return of cars?

Mr. CLARKE. There have, Senator. Specifically, we have recommended to the Department of Justice that prosecutions be brought against the following named railroads: Pennsylvania, New York Central, B. and O., Nickel Plate, Chicago Northwestern, Katy, and Rock Island. I am unable to tell you the status of those actions except that we were advised earlier this week that a judgment had been entered against two of them, I believe in the sum of \$2,500 each.

Senator MORSE. My understanding is that the Baltimore and Ohio and Pennsylvania Railroad have been prosecuted and paid fines of \$2,500 each for violation of this service order?

Mr. CLARKE. I believe that is correct.

Senator MORSE. Mr. CLARKE, does the Interstate Commerce Commission have a sufficient number of car service agents to police its car service orders?

Mr. CLARKE. We do not. We have 30 to cover hundreds of freight yards and terminals throughout the United States.

Senator MORSE. Is the Interstate Commerce Commission making a request in its budget request this year for substantial increases of this number?

Mr. CLARKE. We did ask for a substantial increase; yes, sir. Our appropriation as it went through the House does provide for 40 instead of 30.

Senator MORSE. Is it your judgment that that is far too low a figure to provide the service that the shippers of this country need for adequate policing of the car service?

Mr. CLARKE. Yes, sir, it is inadequate.

Senator MORSE. And is it your recommendation that the number must be increased on the Senate side?

Mr. CLARKE. We think it would be very helpful, and we could do a much better job with more service agents.

Senator MORSE. On this issue I am a recruit in your ranks.

Mr. CLARKE. Thank you.

Senator MORSE. That is all for now, Mr. Chairman.

In my opening statement I will say something about my desire in regard to further examination of the Interstate Commerce Commission officials at a later date.

Senator SCHOEPFEL. Mr. Clarke, I think reference has been made to Pittsburgh, to a speech made at Pittsburgh on the car shortage. Do you have a copy of that speech available?

Mr. CLARKE. Yes, sir.

Senator SCHOEPFEL. If you will make that available to us, I will see that it goes in the record at the appropriate place.

Mr. CLARKE. Thank you.

(The document referred to above is as follows:)

REMARKS OF COMMISSIONER OWEN CLARKE, MEMBER OF THE INTERSTATE COMMERCE COMMISSION, BEFORE ALLEGHENY REGIONAL ADVISORY BOARD, PITTSBURGH, PA., MARCH 22, 1956

There is perhaps no economic problem that so intimately affects the American people as car shortage. It reaches into every industrial, business, mining, and agricultural enterprise, and into the home of every citizen. It is an old and painful story.

Car shortages have often occurred in periods of increased production as one of the symptoms of industrial distress. They are infrequent in depressions but are regular and serious in wartime and during booms. Thus, in 1906, during World War I, and its aftermath of unrest, in World War II, and the period of readjustment which followed, throughout the Korean conflict, and again last year and today, our economy has wrestled with problems of car supply and their solution. Remedies of varying effectiveness have been tried—and in varying degrees found wanting.

Many people naturally blame the railroads for failure to anticipate traffic demands and to buy more cars. Undoubtedly, the rails deserve a large share of the blame. But assessing blame during periods of shortage, produces few freight cars for the simple reason that cars cannot be built in a short time.

There are more fundamental factors than emotional attitudes that affect the rate of private investment in freight cars. Anyone who looks at the record will be impressed with the fact that purchase of cars generally has fallen with slackening business and low earnings, and has risen again with increased business activity and improved earnings.

The close relationship between profits and railroad willingness and financial ability to invest was recognized after World War I when car shortages were very severe. Accordingly, Congress incorporated provisions in the Transportation Act of 1920, authorizing higher rail rates and, thus, higher rail profits in order that the country as a whole might have a more ample supply of cars and other rail facilities.

But despite that policy and the historical example of how greater profitability in the subsequent 1923 to 1930 period led to more adequate investment in such facilities, in the decade since World War II the railroads have been expected to supply adequate cars, improve their roadways, and make new cost-reducing and service-improving investments on the very lean and substandard average return of 3½ to 4¼ percent on their depreciated capital investment. Today's inadequate car supply has been one of the inevitable results of that low-return policy.

Shippers who have strenuously resisted postwar rate increases to cover inflationary costs should not be surprised at the result. But in their own long-run interest they should ponder the implications for the future of continuation of those policies discouraging to adequate private investment.

I am firmly convinced that the one thing, and the only thing, which will ever enable and cause the railroads to carry out a sufficient program of freight car acquisition and plant improvement will be to permit them to earn sufficient net return to raise the new capital required for these purposes. Only in this manner can railroad facilities continue to expand to meet the expanding economy of an expanding America.

The Interstate Commerce Commission has been doing its part to help improve rail earnings. Within the past 6 months we have permitted the 15-percent rate increase authorized in *ex parte* 175 to become permanent and have granted an additional 6 percent in *ex parte* 196. I can assure you that placing our stamp

of approval on any general rate increase is a most unpleasant task. However, when we become convinced that a more favorable rate of return is a necessary prerequisite for adequate facilities and service, our responsibility and duty is clear. Current regulatory policy, I believe, has been one of several factors contributing to the attitude of confidence so apparent in the railroad industry today.

This great medium of transportation, at long last, is entering a new era. The defeatist complex under which it operated for so many years is rapidly vanishing. In its place we are finding a refreshing new attitude and spirit of optimism. Bold, aggressive management is adopting a positive approach to problems of the industry.

The tremendous amount of new equipment now on order, including 145,000 freight cars, dramatically reflects the confidence of railroad management in the continued expansion of our economy. Willingness to experiment with special service equipment, such as damage-free boxcars, mechanical refrigeration, bulk-head cars and trailer-carrying flatcars is further positive proof of the new vitality of this industry.

All of these things indicate a determination not only to hold, but also to increase, rail participation in the Nation's total traffic.

But the most encouraging change is the apparent abandonment of a feast-or-famine, month-to-month basis of acquiring new plant and equipment. Recently, top railway management has been talking in terms of long-range planning—in terms of billions of dollars to be spent during the next 5 to 10 years. If these plans materialize it will bring great benefit not only to the railroads but to the entire economy of the country. All in all, the future of the industry appears to be more optimistic today than ever before.

But now let's get back to the theme of this meeting—car shortage. We might as well acknowledge that in all probability we are going to experience another shortage of very serious proportions during the next 8 months. What are the railroads doing about it?

First of all, through their stepped-up car-repair program they are making substantial headway in reducing the number of bad-order cars. Whereas 1 year ago unserviceable freight cars represented about 7 percent of the fleet, the percentage is now down to approximately 4. With practically all repair shops in full operation, it is reasonable to expect that there will be a further decrease in the number of bad-order cars.

Secondly, the railroads have ordered new freight cars at an unprecedented pace. Dollarwise, the cars on order represent an investment of \$1¼ billion. Unfortunately, shippers cannot load cars on the builders' books. But it is sincerely hoped that a substantial number can be completed and put in service in time to be of some help during the peak loadings next fall.

Pittsburgh would seem to be an appropriate place to make a special and urgent plea to the steel industry for more generosity in the allotment of materials for car building. Because of the severe limitations upon steel supplies, production of new freight cars is running at less than half of shop capacity. Earlier this week the Pennsylvania Railroad announced that it would have to cut back its freight car building programs at its Altoona shops and lay off a substantial number of workers because of the inability to secure steel plates and structurals.

While it is recognized that the steel industry is setting production records in an effort to fill the needs of many customers, it should not be forgotten that production alone is not enough. Transportation, and particularly rail transportation, is an essential ingredient to give place-utility to the products of the steel mills. After all, in Casey Stengel language, there is no more of anything than can be hauled.

What is the Interstate Commerce Commission doing about the car shortage? In an effort to obtain maximum utilization of existing equipment, we are preparing to issue whatever emergency service orders we believe will promote more efficient use of cars.

The first of these orders was issued last Monday and will become effective on April 9. It is especially designed to put a stop to the sinful waste of freight equipment through circuitous routing and slow schedules. But its terms it will become unlawful for any railroad to willfully delay the movement of loaded freight cars by holding them in yards, terminals, or sidings for the purpose of increasing the time in transit.

Also, setting out loaded cars between terminals or backhauling for the purpose of increasing the time in transit will not be permitted. The use of any route other than the usual and customary fast-freight route, except in emergencies,

or for the purpose of according a lawfully established transit privilege, will be prohibited.

It may be surprising to some of you that these uneconomical practices exist. Unfortunately, they do. Because of the selfish demands of certain shippers who have expected mobile storage in addition to transportation, other shippers have been deprived of needed service. We are hopeful that the action taken this week will stop, once and for all, this flagrant abuse of rail facilities.

In the near future we will probably adopt an emergency order similar to service order 904, issued last July, requiring the railroads to improve their handling of traffic by placing and pulling cars at industries and forwarding them in road-haul movement within 24 hours. It is our belief that many additional cars were made available for loading last season through the increased efficiency in railroad operations which this order required.

Also under consideration are a series of other service orders which would restrict partial loading and unloading and reduce the free time on export and import traffic at coastal ports. By the same token, the Commission will look with extreme disfavor upon any attempts to increase free time at the Great Lakes ports.

During the past 14 years a variety of measures have been tried, calculated to extract greater utilization from the existing car ownership. •For example, 13 times during those years penalty demurrage charges ranging from \$11 to \$44 per day have been ordered. Inasmuch as a freight car is in the hands of the shipping public approximately 50 percent of its productive life, these punitive measures were considered justified as a necessary stimulant for securing prompt loading and unloading.

Last year, however, we decided to try a different approach. Instead of invoking penalty demurrage we made an appeal for voluntary cooperation in the conservation and provident utilization of the limited car supply. Thanks to the splendid efforts of the car efficiency committees of the shippers advisory boards some very gratifying results were obtained. Nevertheless, the percentage of cars held beyond free time showed some increase. Although we much prefer the voluntary way of doing things, unless this trend is reversed the Commission may be compelled to make some sharp adjustments upward in demurrage charges this coming season.

If that should come about, we will undoubtedly be confronted with the argument that justice and equity require similar treatment for those railroads which are habitually delinquent in the handling of cars. With this general principle we are in complete accord. Unfortunately, however, we lack the statutory authority to order penalty per diem charges. While under section 1 (14) (a) of the Interstate Commerce Act, the Commission may establish the compensation to be paid for the use of a freight car, in *Palmer v. U. S.* (75 Fed. Supp. 63), a three-judge court held that the use of the word "compensation" in the act precluded the Commission from establishing a per diem charge in excess of any purported reasonable recompense to the owner.

In reaching its decision the court pointed out that per diem charges—or reasonable compensation for use—have none of the decisive characteristics of demurrage charges, the direct and exclusive purpose of which is to promote car efficiency by penalizing undue detention of cars. One significant sentence in the court's opinion reads as follows: "If the language of the statute were plain that car-hire charges could be fixed at prohibitive levels for regulatory purposes, that language would control."

Interpreting these words as a pointed suggestion, we have proposed specific legislation, Senate bill 2770, to authorize an increase of per diem charges in periods of car shortage. Basically, the purpose and intent of this bill is to give the Commission authority to compel railroads not only to provide sufficient freight equipment to meet the public demand for transportation, but also to move and handle freight cars more expeditiously.

The one—and perhaps the most important segment of the cycle of car handling and movement which has resisted practically every curative—is that phase where the car is in the hands of the carrier. During such periods the Commission has virtually no way to compel prompt action. The lack of effective means to spur and stimulate railroads into greater efficiency in times of shortages is the major weakness in the present car-service provisions of the act.

Increased car ownership is but one facet and not the complete solution to the problem. The history of car service from the turn of the century is replete

with situations where shortages have occurred even through numerical ownership was considerably greater than today. The conclusion is inescapable, therefore, that while additional equipment is undoubtedly needed to accommodate the extraordinary amount of traffic, the railroads have not used their existing equipment prudently.

We believe that the many serious avoidable delays in the handling of cars fully justify the imposition of penalty per diem as a pecuniary spur to management. With the earning value of an average freight car many times the current per diem charge, the temptation is strong among railroads, and especially those having little or no ownership, to use the equipment of other carriers and to delay the return of foreign cars.

Car shortages are aggravated because a few railroads consider it cheaper to rent cars than to own them. So long as a railroad can meet its peak demands with rented equipment, it has no economic incentive to provide its fair share of an adequate national car supply. The inevitable result is that an adequate supply is never acquired.

Because of the ever-changing location of freight cars, it is difficult, if not impossible, to cope effectively with the situation under the present powers of the Commission. Hence, there is an urgent need for legislation to compel the railroads to exert greater efforts in acquiring a sufficient car ownership and in moving the traffic more promptly. We believe the proposed legislation will accomplish these objectives.

If Congress agrees with us, the first step under the new law would be to determine the extent to which railroads, individually and collectively, are deficient in car ownership. This would involve a fairly complicated study of traffic requirements, including the periods of peak loading on individual lines. Certain concessions would have to be made for short line and terminal railroads. With that foundation, however, the Commission would then be in position to order deficit railroads to increase their ownership to a prescribed level within a reasonable time or suffer penalty per diem charges, in the event of another shortage.

While such a law would not completely cure the car supply problem, we feel certain that it would help materially to reduce the crippling economic impact of future shortages.

During the coming months adequate rail transportation will be available only if the fullest measure of cooperation is forthcoming among the shippers, the railroads, and the receivers. Everyone wants to help prevent plant shutdown because of a lack of freight cars.

That being true, some small sacrifices must be made in deference to car efficiency. The best antidote to such a potential dilemma is to give full force and effect to the cardinal principles of car conservation which the Shippers Advisory Boards have long advocated. Although you know them well, because of their current application, they are worth repeating.

First of all, order cars properly. If you anticipate a heavy loading schedule, tell your railroad about it, giving as much advance notice as possible, but do not order cars placed until commodities are ready to load.

There is a temptation in times like these to order cars in excess of current requirements. Nothing will dry up car supply faster than such a practice. Padded orders create dissatisfaction and, in many instances, deprive your source of supply of the opportunity to ship.

Secondly, load and unload cars as promptly as possible regardless of free time. One hundred thousand freight cars could be added to the supply available to you and to other shippers and receivers if 1 day could be saved in the average turnaround time. Believe it or not, if all cars had been released within the free time last year, enough equipment would have been made available to wipe out the entire shortage.

Third, observe car service rules strictly. There is no better way to guarantee proper supply in all districts than to make a car earn its way home loaded.

Fourth, wherever practicable load to the full carrying capacity or cubical limit. If every car of last year's freight had carried just 1 more ton, 40,000 additional units would have been available for the Nation's commerce.

Finally, cooperate fully with the clean car campaign being carried on under the auspices of the National Association of Shippers Advisory Boards. With the expenditure of just a few minutes of time many cars may be made ready for immediate reloading, thus eliminating time-consuming delays for reconditioning.

No shipper has the right to complain if he is by his own acts needlessly and wrongfully reducing the available supply of cars.

The problem of freight car utilization is not new nor easily solved. There exists no panacea. But real progress is possible of attainment if the situation is vigorously attacked by shippers and carriers alike. Here is a matter regarding which they can heartily and energetically cooperate to the very great gain of both. The challenge is clear. To meet it is most essential.

Senator SCHOEPEL. I think that is all, Mr. Clarke.

We will now hear from Senator Morse.

#### **STATEMENT OF HON. WAYNE MORSE, A UNITED STATES SENATOR FROM THE STATE OF OREGON**

Senator MORSE. Mr. Chairman and members of the committee, at the outset I want the committee to understand the situation in which I find myself, and also my intentions as to further consideration of this matter. Last summer Senator Neuberger and I made a very thorough investigation of the car shortage situation in Oregon. We found the matter so intolerable that we made a request of Senator Magnuson for investigation of the car shortage boxcar problem.

As the acting chairman of the committee knows, Senator Magnuson went into the matter and issued the decision that such a hearing would be held.

This hearing has been called. Part of its purpose is to consider the bill that is before us, and part of its purpose is to go into the car shortage matter.

Unfortunately in my statement some days ago the rumor was spread that this would be limited entirely to the per diem penalty bill. Senator Magnuson then issued a press release correcting that rumor, assuring the shippers of my State that this hearing would also go into the boxcar shortage matter.

As a result we have certain witnesses with us today from Oregon who are going to testify, not only on the bill and on order 910, proposed order 910, but on the boxcar shortage matter. Ordinarily, Mr. Chairman, I wouldn't take time under those circumstances to testify myself. I would wait until the committee could meet with me more conveniently and not impose upon the time of the witnesses that have come more than 3,000 miles.

However, I met with these witnesses this morning at breakfast. They are familiar with my point of view on this matter. It was their opinion that I ought to make my statement in the early moments of this hearing because my statements bear directly on some of the testimony they are going to give.

I will read it as quickly as I can. Senator Neuberger will have a much shorter statement, a supplementary statement to mine, because in our division of work between the two Senators from Oregon this happens to be one of my major projects, whereas he has other major projects in which I give him so-called back-stop support.

I cannot stress too much, Mr. Chairman and members of the committee, that this is an exceedingly serious matter in my State. In my judgment the Interstate Commerce Commission has a lot to answer for, in what I consider an entirely incompetent handling of this boxcar matter now for some years. And the American railroads have a lot to answer for.

I don't intend to stop with this hearing this morning. I serve notice on the Interstate Commerce Commission this morning that I intend

to press this matter with the exercise of every possible authority that I have as a United States Senator, in all the channels of the United States Senate, until I get a satisfactory solution to this boxcar shortage problem that they, in my judgment, are responsible for in no small measure, because they have let the railroads of this country get by with economic murder in my State, as far as this issue is concerned.

Now they come out with order 910. I will, in the course of my statement, ask this committee to give consideration to my request and Senator Neuberger's request for suspension of that order until there can be a hearing on that order, because you can't sit down with these lumbermen from my State and reach any other conclusion but that what the Interstate Commerce Commission is doing is cutting the economic guts right out of the small lumber mills of my State by this order, and it shows a gross ignorance on the part of the Interstate Commerce Commission as to lumber operation.

What they ought to do is put on some overalls and get into the lumber mills and learn the lumber industry from top to bottom before they issue such an order as they have issued.

I want to say that I testify here also not only as a Senator from Oregon, but I testify also as the chairman of the Small Business Committee of the Banking and Currency Committee and the Select Small Business Committee, and on the latter committee the Senator from Kansas is one of my most able colleagues.

I am interested in the effect of this boxcar matter and the effect of order 910 on the small businesses of the country. It is about time, may I respectfully say, that we do a better job in the Senate and the Congress in protecting small business.

Mr. Chairman, on behalf of the rail shippers of the State of Oregon, I wish to express appreciation to the members of the Senate Interstate and Foreign Commerce Committee for granting this opportunity to interested parties to present their views and suggestions concerning our seemingly endless problem of freight car shortages.

The subject under consideration is not new to Oregon. Businessmen who have long been engaged in shipping by rail tell me that the problem of freight-car shortages, particularly in the lumber industry, has reached its half-century mark.

This is an interesting milestone, but is one that should be removed promptly. In my opinion the Senate Committee on Interstate and Foreign Commerce, under the able leadership of its chairman, Senator Magnuson of Washington, is performing a fine public service in its efforts to put an end to this nonstop endurance contest of freight-car shortages. I might add that this contest is one in which the railroads do the promoting and collect the gate receipts, the shippers engage in exhausting efforts, and the public, as spectators, find little amusement.

For many years past I have worked with Government officials and with colleagues in the Senate to bring relief from these periodic shortages. Others have joined in this effort, but the problem has not been solved to a substantial degree.

However, we have made some progress in that we have determined the root cause of the problem, namely, the lack of initiative and foresight on the part of American railroads in meeting shippers needs.

## AMERICAN RAILROADS NEED AWAKENING

The sad fact is that the number of freight cars owned by our railroads is steadily decreasing. From recent figures compiled by the Association of American Railroads, I note that freight-car ownership in the class I railroads decreased from 1,729,939 on March 1, 1955, to 1,696,259 on March 1, 1956.

This trend has been in effect since the beginning of 1926 when the railroads owned a total of 2,347,275 freight cars. Of course, the freight car of today has greater capacity to move traffic than the car of years ago, but the railroads appear to have made little real effort to meet the expanding needs of our shippers. I have a strong suspicion, Mr. Chairman, that the railroads are concentrating so intensively on the profit dollar, that they fail to comprehend fully the car service needs of business and industry.

Apparently, general freight rate increases, not more freight cars or better service to shippers, seem to appeal to the railroads as a means of bettering their situation. I doubt that any other form of business takes such an attitude. It is small wonder, therefore, that the railroad's proportion of the total intercity traffic is steadily decreasing. In 1939 the railroads carried 62.34 percent of such traffic, in 1954 only 49.5 percent. We can predict an even smaller proportion of traffic for the railroads in the future unless they change their attitude.

The foregoing facts become most disturbing when we recall that during recent years the class I railroads of this country have not suffered from financial malnutrition. Figures made available to me by the ICC reveal extremely favorable net railway operating income averaging about a billion dollars per year for American class I railways for the years 1950 to 1954 inclusive. This figure increased during 1955, when our class I railways earned \$1,128 million in net railway operating income.

Contrast the foregoing profit figures with those relating to capital expenditures for equipment. During the period of 1951 to 1954 inclusive, there was a steady and marked decline in capital expenditures for equipment on class I railroads. In 1954 they dropped to approximately one-half of that amount—\$499 million.

The figures for new freight cars put into operation and freight cars retired on class I railroads between 1951 and 1955 inclusive, are also very revealing. They show a decided adverse trend insofar as interests of shippers are concerned.

Mr. Chairman, I ask unanimous consent that there be inserted at this point in my remarks the following table:

*Total freight cars installed and retired, class I railways, 1951 to 1955, inclusive*

|                                | Total freight<br>cars installed | Total freight<br>cars retired |
|--------------------------------|---------------------------------|-------------------------------|
| 1951.....                      | 87,727                          | 53,028                        |
| 1952.....                      | 67,420                          | 62,240                        |
| 1953.....                      | 69,394                          | 50,128                        |
| 1954.....                      | 30,562                          | 71,858                        |
| 1955.....                      | 37,509                          | 73,491                        |
| January to February 1956 ..... | 9,276                           | 7,362                         |
| Total.....                     | 301,888                         | 318,102                       |

The foregoing figures are sufficiently discouraging in themselves but they become appalling when we reflect that during the same period of 1951 to 1955, inclusive, the class I railroads had the benefit of rapid tax amortization on their freight-car programs.

I digress, Mr. Chairman, to recall that when we first had this proposal for tax-amortization benefit to the railroads, I went over to Altoona, Pa., one of the boxcar construction centers of this country, to take a look at what was happening over there, because the Senate had received very strong protests from workers over there about a disaster unemployment area. And after I made that personal inspection I came back—and the Congressional Record will show statements that I made on the matter then, saying that I was going to go for the accelerated tax amortization program because I thought it would help put men back to work and I thought it would help relieve this boxcar situation.

And I think that it is a sound program, provided, Mr. Chairman, we put boxcars on the rails, and we don't use it as a scheme for getting out of service boxcars that with little repair still could stay in service for a few years. And therefore, the tax amortization program would amount to adding to the total number of boxcars. But that isn't what the railroads of this country have been doing. They have been shaking down the taxpayer again, and they are very adept at it, Mr. Chairman.

Once again they are taking the benefit of the accelerated tax amortization program, which is nothing but an interest-free loan, in order to get new cars at the resulting reduced prices to them, and then they are putting out of operation a lot of cars which I am advised by authorities that I consider to be completely reliable can be kept on the tracks with little repair work some years longer.

And the result of our tax amortization program has not been to increase the number of cars. It has been to increase the number of new cars for the railroads, to their great financial benefit, but the total result has been a decrease in cars for the shippers of this country. And the shippers know it.

These men from Oregon know it. And you are going to hear from them about it, Mr. Chairman, because they happen to think—and I think they are right—that the Congress has some obligations on this.

I will help the railroads, I will help the railroads with amortization as far as my vote is concerned, to get new cars to meet this economic need that the small business shippers of this country need.

But I want them to keep cars that can be kept on the tracks on the tracks. I want an increase in the total number of cars. I will go even further than that. If they can come in and weep enough crocodile tears about their economic situation, Mr. Chairman, to show that they need some further subsidy, even at the risk of being called a creeping Socialist, I will go along with that, because I want the cars for the businessmen of this country. I am making a fight for private enterprise, not for monopoly. But for the competitive system, I want to say, as the chairman of the Subcommittee on Small Business, that what we need to do in the Congress is to proceed with some legislation that is going to protect the small business and the competitive system in this country.

Here is a specific example of it.

I would even go so far, if they can come out and show a case for it, as being perfectly willing to have the Government help them build boxcars, and maybe hold a Government reserve of boxcars available for these boxcar shortage periods, and let them out to them as that kind of subsidy, if they are that near broke, and of course they are not.

But if they want to make a case that economically they can't go ahead and build cars that are needed for a continuous flow of adequate cars 12 months of the year, I am for the Government helping them. Although, let me tell you, this boxcar shortage problem has become just about a 12-month problem. And it only spells out one thing: You just do not have enough cars on the tracks to meet the shippers' needs in this country. You have to do something about it. And you have to have an Interstate Commerce Commission, let me say most respectfully, that will exercise the power it has and pay less attention to the propaganda of the railroads.

It is about time that the Interstate Commerce Commission carried out its statutory functions. All you have to see, as I shall point out later, is what they are doing with regard to the policing service in regard to car service. In my country, they have, in Portland, Oreg., one car serviceman without even, for a large area, without even a stenographer. Without even a stenographer, Mr. Chairman. And there he has to sit, pounding out with his own fingers on the peck system, reports to the Interstate Commerce Commission when he ought to be out in the field policing the car shortage problem.

They don't even supply him with a stenographer. That is how inefficient this Interstate Commerce Commission is. And it is about time we get behind the veil of the Interstate Commerce Commission and point out its gross inefficiency that characterizes so much of its administration.

It happens to be a child of the Senate of the United States and the House of Representatives. And it is about time that as parents we go back to the old sound parental policy of giving them a spanking for misbehaving. And the Interstate Commerce Commission has some horsewhippings, not spankings, in store for it if we do justice to the people of this country, because of the complete inefficiency that has characterized the Interstate Commerce Commission in the handling of this boxcar-shortage matter.

Mr. Chairman, based on information supplied by the Interstate Commerce Commission, we find that a total valuation of \$2,320,908,334 in freight-car construction was under 85 percent accelerated tax amortization between 1951 and 1955, inclusive. Here are the figures:

*Freight car valuation under amortization*

|                                                |                  |
|------------------------------------------------|------------------|
| Available from 1950 to be carried forward..... | \$33, 862, 000   |
| 1951.....                                      | 636, 520, 800    |
| 1952.....                                      | 843, 320, 231    |
| 1953.....                                      | 428, 428, 484    |
| 1954.....                                      | 143, 098, 485    |
| 1955.....                                      | 235, 678, 334    |
| Total.....                                     | 2, 320, 908, 334 |

Thus the amortizable amount was \$1,731,600,890, constituting, in effect, a tax-free loan from the Government. There is a serious doubt as to whether this paid tax writeoff program should apply where it

fails to produce an overall increase in the number of boxcars on American railroads.

A mystery that practically defies the imagination is why the railroads, with this enormous rapid tax writeoff bonus, did not initiate a truly forward-looking car construction program. Their record of heel-dragging is inexcusable.

The railroads have been described as the "lifeline of our economy," particularly in times of emergency. Their importance to our whole economy and to national defense is tremendous. That is why I am deeply concerned over current indications that this vital industry is failing to keep pace with the transportation demands of the Nation.

#### RAILROAD FREIGHT CAR USE PRACTICES ADD TO THE CAR SHORTAGES IN THE WEST

The economic activities of the West as compared with those of the heavily industrialized East set the stage for car shortages in the West.

The principal economic activities in the West, and the South as well, are those of producing bulky, heavy-loading commodities such as lumber, minerals, and grain.

These by necessity must move in large volume to the areas of greatest consumption in eastern portion of the United States, where the bulk of the population and most of the Nation's industry is located. Obviously, in the West and in the South, more carloads of freight are originated than terminated. The opposite is true in the East.

Thus, the preponderance of freight movement is eastbound, requiring movements of empty cars west and south. Prompt return of these cars is highly important to the economic well-being of these areas.

Once these cars are unloaded in the East it seems that there is a tendency for the eastern roads to avail themselves of the use of these cars for their own traffic rather than loading them promptly with freight destined to the South and West, or returning them empty. Expressed in a word that has often been used in another connection, the Interstate Commerce Commission should be given authority to "unleash" freight cars when necessary to relieve car shortages.

Failure to return freight cars promptly accentuates the car shortage in Oregon in the period each year when economic activity is at its height. The shortage is aggravated even more in those areas where a single railroad holds a monopoly and knows that shippers must wait until the carrier chooses to furnish cars.

The committee bill, S. 2770, is designed to correct this practice of the eastern railroads to delay the return of freight cars to the West. The bill would grant increased authority to the Interstate Commerce Commission to deal with freight-car shortages.

I favor such authority being given to the Interstate Commerce Commission; so I favor the passage of this bill as it is now written, or with reasonable changes that are calculated to give the Commission authority to establish penalty per diem rates to promote "expeditious movement, distribution, interchange or return of freight cars," the additional charges to be paid to the owners by the carrier using such cars.

"Return of freight cars" is a phrase used in the bill that is of great practical importance to the State of Oregon and the Pacific North-

west. It is failure to return the cars owned by the railroads in the Northwest that accentuates the shortages of freight cars that occur periodically. The passage of this proposed legislation is of greatest importance in those areas in which a monopoly of rail service exists; some of those areas lie in Oregon.

RAILROAD CAR SERVICE MONOPOLY—A GUARANTY OF FREIGHT CAR  
SHORTAGES

During the past summer and fall I traveled extensively in Oregon, and I can assure the committee that the subject of freight-car shortages was raised by scores of Oregon businessmen, especially those engaged in the lumber and plywood industries in the area south of Albany, Oreg., and west to the Pacific Ocean.

Again and again these people, who have had first-hand experience, insisted that the Southern Pacific Railroad is discriminating against the State of Oregon in the distribution of freight cars and that it has been favoring California shippers of lumber to the disadvantage of Oregon shippers.

They further contended that the freight-car shortage is most acute in the areas of the State where the Southern Pacific is the sole source of rail freight transportation. In other words, they asserted that where competition exists among rail freight carriers in Oregon, Washington, and California, boxcars are available for the lumber industry in ample quantities. But, where the Southern Pacific Co. enjoys a monopoly—as it does in so many Oregon communities—almost invariably lumber shippers can be sure of one thing: an insufficient quantity of boxcars.

Several months ago I talked to a group of about 15 lumbermen in Grants Pass, Oreg. They stated that the Southern Pacific Railroad apparently regards Grant Pass as a forgotten area. These businessmen said that for weeks they had been getting from 25 to 50 percent of the boxcars actually needed and that this resulted in mill operations that often totaled less than 50 percent of capacity.

These people charged that the Interstate Commerce Commission failed to properly police a critical shortage of boxcars where a rail freight carrier operates as a monopoly.

This problem has ceased to be "seasonal in nature." The unfortunate car shortage in western Oregon appears to have become an institution, but it is one that cannot and should not be tolerated longer.

The lumber market is one that is subject to rapid fluctuations. Readily available and adequate rail transportation is absolutely essential in attaining the benefits of a favorable market. Producers of lumber and lumber products in Oregon, both large and small, suffer substantial economic losses while they stand by waiting for their share of cars at the sufferance of the rail carrier. If the Southern Pacific is in fact discriminating against Oregon in the distribution of freight cars, it is a practice that cannot be endured much longer by Oregon lumber producers in the category of small business.

And the Interstate Commerce Commission ought to get on the job and do something about it under the powers it has under existing legislation. If it needs more power let it come up here and ask for legislation that will give it the power it needs to protect the shippers of this country.

That is one of the functions and duties of the Interstate Commerce Commission. It was one of the purposes and intents of Congress when it was set up as an agent of the Congress.

I urge the committee to explore ways and means of getting freight cars for use at the height of the season in this rail monopoly area of my State. Favorable action on S. 2770 will help, but additional remedies are essential. One of these, I respectfully submit, is the addition of highly essential car service agents to the staff of the Interstate Commerce Commission. The committee can perform an important public service by making recommendations on this score.

#### CREEPING PARALYSIS IN THE ICC—THE REDUCTION IN CAR SERVICE PERSONNEL

The Interstate Commerce Act gives the Interstate Commerce Commission broad powers under which to assure adequate service to the public on the part of our American railroads.

For example, we find these provisions:

(11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service \* \* \*.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part \* \* \* and the penalties or other sanctions for nonobservance of such rules, regulations, or practices.

(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint, or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine:

(a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission;

(b) to make such just and reasonable directions with respect to car service with regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable;

(c) to require such joint or common use of terminals, including mainline track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable \* \* \*

(16) Whenever the Commission is of opinion that any carrier by railroad subject to this part is for any reason unable to transport the traffic offered it so as properly to serve the public, it may, upon the same procedure as provided in paragraph (15), make such just and reasonable directions with respect to the handling, routing, and movement of traffic of such carrier and its distribution over other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public \* \* \*

A law which is not efficiently administered and effectively enforced is practically worthless as far as end results are concerned. The record shows quite clearly that in recent years a creeping paralysis has

reduced the Interstate Commerce Commission enforcement staff in the field from over 100 agents to 30 as of now.

Just yesterday I learned the almost unbelievable fact that in ICC Zone No. 25 we now have only 3 car service agents, 1 each in Spokane, Portland, and San Francisco. This is the area, Mr. Chairman, in which we have had the most disastrous economic effects from the standpoint of car shortages.

You would think that in this area, which is certainly one of the disaster areas as far as car shortages are concerned, the Interstate Commerce Commission would get some car service policemen out there and see to it that the authority that they have under the existing act is administered to the limit.

We have three for the entire area. Believe it or not, these men have not one secretary to assist them in their clerical duties. It is little wonder that we have an almost insurmountable problem of policing the boxcar situation in the Pacific Northwest.

If the rules and regulations of the Interstate Commerce Commission were effectively enforced, I am satisfied that our car-shortage problem would diminish.

Such enforcement, of course, is not possible in the absence of a proper enforcement staff in the field and the employment of such a staff is, of course, a Federal budgetary matter.

I believe that at the earliest possible moment we should bring the ICC car service agents back to a minimum of 100. I am pleased to note that the House recommended an increase from 30 to 40 a few days ago. I suggest that the number be raised by the Senate to 60 this year, with the ultimate target of 100 to restore efficiency in the field of enforcement.

I sincerely hope that if the members of this committee agree with my conclusions in this respect they will join in urging the Senate Appropriations Committee for the necessary funds. An increase of car service agents from 40 to 60 would call for an addition of approximately \$200,000 for the Interstate Commerce Commission. The importance of the public service these men can perform would make this a bargain-rate appropriation.

#### CAR SERVICE ORDER NO. 910

On March 19, 1956, Division 3 of the Interstate Commerce Commission issued car service order No. 910.

Almost immediately, my office received comments from Oregon lumber shippers. The great majority of communications I received contend that order 910, if put into effect, will completely disrupt normal marketing procedures to the disadvantage of the small mills in Oregon and will play into the hands of the large operators.

Other communications, fewer in number, insist that this order will help resolve the boxcar shortage. Those who have protested on this order assert that they have not been heard on the subject and they ask that the April 9, 1956, effective date of service order No. 910 be postponed by the Commission pending a hearing.

Mr. Chairman, without reading them I ask unanimous consent to have inserted as part of my remarks communications which I have received from shippers in my State on order 910, with the request that

the telegrams be returned to me because I haven't had time as yet to answer them.

Senator SCHOEPPPEL. They will be included.

(Telegrams were received by Senator Morse from the following named individuals and companies:)

GRAND RONDE, OREG., *March 28, 1956.*

Request your assistance in obtaining cancellation of ICC Order 910. This orders appear to discriminate against the small lumber mill and help the car shortage only to the extent of how many small mills are forced into bankruptcy and their cars given to the larger mills.

HODGE BROS. LUMBER CO.

DALLAS, OREG., *March 28, 1956.*

Request your help to cancel ICC Service Order 910. This order will seriously affect our competitive position in merchandising our product. This order will not solve the car problem.

ATLAS LUMBER CO.,  
W. E. SCHMITKE.

COTTAGE GROVE, OREG., *March 28, 1956.*

Retel order 910. Mr. Dana McBarron with other west coast lumbermen will represent us at March 29 hearing. Sorry could not personally be present.

JOE BICHER,  
*President, Daugherty Lumber Co.*

COTTAGE GROVE, OREG., *March 28, 1956.*

We earnestly request you do everything possible to have ICC Service Order 910 governing the movement of loaded cars of lumber suspended as this would disrupt our customary method of marketing lumber forcing us to hold lumber for longer periods of time. Throwing financial strain on us with possible period of layoff for our employees.

SKELTON LUMBER CO.,  
HARRY SKELTON.

EUGENE, OREG., *March 28, 1956.*

Request review and suspension service order 910. This order injurious to great number small mills and wholesalers whose business based on transit selling. Service order issued without hearings and is not satisfactory answer to car shortage.

LOVEGREN LUMBER CO.

CORVALLIS, OREG., *March 28, 1956.*

Railroad service order 910 discriminates against small operator dependent transit shipment; offers no real solution car shortage. Request consideration.

J. W. RANDALL,  
*Randall Lumber Co.*

CORVALLIS, OREG., *March 28, 1956.*

Do you understand both sides of the question involving service order 910? This order will be injurious to a very large percentage of mills, wholesalers, and retailers. Request you withhold this order for hearing in Oregon.

THOMPSONS SEVENTH STREET MILL.

EUGENE, OREG., *March 28, 1956.*

Transit selling essential our mill. Urge suspension order 910 which was issued without hearing because it eliminates most efficient method selling transit creating higher costs and shorter car supply.

CUDDEBACK LUMBER CO., INC.,  
By S. A. CUDDEBACK.

EUGENE, OREG., *March 28, 1956.*

Re wire 27 contents noted. Fully informed delegation en route. Market already seriously affected. Dimension off \$5 per thousand. Regards.

SHAMROCK LUMBER CO.,  
CHELSEA H. BROWNE.

DALLAS, OREG., *March 28, 1956.*

Request help to cancel ICC Order 910. Seriously affects our competitive position and method of selling. Service order will not eliminate car shortage.

GODSEY LUMBER CO.

CORVALLIS, OREG., *March 28, 1956.*

Transit selling is essential to most west coast mills. ICC Service Order 910 will seriously damage them. This order must be held for hearing in Oregon or canceled.

WESTERN LUMBER CO.

CORVALLIS, OREG., *March 28, 1956.*

ICC Service Order 910 will cut the throat of the average west coast mill. Urgently request it be reviewed and canceled or withheld for hearing in Oregon.

3-G LUMBER CO.

ROSEBURG, OREG., *March 28, 1956.*

The ICC Service Order 910 is a smokescreen to ruin competitive small lumber producers who use transit shipping methods as a means of selling their products. This order will not noticeably improve the boxcar supply and it will definitely disrupt all mills and wholesalers who are transiting their lumber as a means of disposing their products. At least let's bring it out in the open and let's have a public hearing on the order.

CONSOLIDATED MILLING CORP.

SEATTLE, WASH., *March 28, 1956.*

We wish to protest against the Interstate Commerce Commission Service Order 95-910, railroad operating regulations for movement of freight cars. We request you endeavor to get a postponement as we feel this is a discriminatory action pushed through without due hearings by a highly organized minority of the lumber industry consisting of large lumber mills who are opposing progressive merchandising by the unorganized majority of the industry consisting of smaller mills and wholesalers.

GRAY LUMBER & SHINGLE CO.,  
Wholesalers, organized in 1919.

DRAIN, OREG., *March 28, 1956.*

Urge you do all within your power to have ICC Order 910 canceled. Transit selling essential to our mill.

NOBLE GRAY PASS CREEK SAWMILL.

ROSEBURG, OREG., *March 28, 1956.*

We are wiring in protest to special ICC Service Order 910. We feel this order is very discriminating and will seriously affect our business as an independent sawmill and lumber products operator. We urge action to be taken to have this order suspended or postponed until all the facts can be presented.

GREEN VALLEY LUMBER CO.

PORTLAND, OREG., *March 26, 1956.*

The ICC without conducting public hearings and without consulting most affected persons and organizations has drawn up ICC service order No. 910 to go

into effect April 9. This was done on the advice of only the WCLA and the Southern Pacific Railroad. The alleged purpose of the order is to alleviate car shortage by speeding up delivery of cars to destination. However, the facts are the transit cars go faster to destination than others and statistics have been compiled and show this to be so.

This transit business is the life of the small operator because in this way he not only merchandises his stock faster but also gets a better price. Furthermore this would give an unfair advantage to the producers in Canada where this regulation is not in effect. We therefore ask that you contact the ICC and get them to postpone the regulation until a public hearing can be had in Portland where all interested parties, including small producers, wholesalers, connecting railroads, etc., can be heard. It is absolutely imperative that the order be postponed as it poses such a grave and immediate danger to the small producers. Will you please advise us of whatever action you take in this matter?

UNITED LUMBER CO., INC.

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EUGENE, OREG., *March 23, 1956.*

Your attention directed to ICC Order No. 95-910 dated March 19, 1956, to be effective April 9, 1956, covering railroad operating regulations for the movement of loaded freight cars. This order ostensibly to relieve the national freight-car shortage. However, we feel it is directed against large part of the industry engaged in wholesale and distribution, also small- and medium-sized manufacturers who are not members of lumber manufacturing trade associations favoring regulations such as order No. 95-910. We feel this order the result of recommendations of groups representing the minority in the industry and respectfully request you do all possible to postpone effective date of this ICC Order No. 95-910 until hearing can be conducted on behalf of other interested parties. If ICC Order No. 95-910 goes into effect April 9 present channels of distribution of lumber will be disrupted resulting in damage to many and benefit to few. We want our chance to be represented in this matter.

STAR LUMBER CO.

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EUGENE, OREG., *March 23, 1956.*

We concur with telegram to you from Dougherty Lumber Co. March 22 pertaining to ICC Service Order No. 95-910. The service now provided by railroads enables smaller sawmills to compete with larger sawmills as indicated by the tremendous volume shipped in transit at lower shipping costs to sawmills and yielding greater returns as retailers can but transit cars with certainty of exact lumber content and guaranteed delivery dates for which they are willing to pay and do pay a premium. The transit market is the smaller mills market. Service order No. 95-910 is discriminatory and in effect outlaws principal market of smaller operators. Consider that transit cars are loaded out quicker, contain appreciably more lumber per car and that during car shortages delays en route insignificant. Results of this order will increase loading time, decrease lumber content per car as benefits from shipping in transit restricted. This order appears another effort by one segment of our industry to produce competitive advantages for larger mills. We urge its suspension. The smaller mills, wholesalers and retailers have not been heard.

E. H. ROBBINS,  
*Manager Timberland Lumber Co.*

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EUGENE, OREG., *March 23, 1956.*

Re Interstate Commerce Commission Service Order No. 95-910 to be issued effective April 9, 1956. We feel that this order is discriminatory toward ourselves and other small mills and transit lumber wholesalers upon whom we depend for our livelihood. We feel we are entitled to a hearing before the ICC before this order is put into effect.

CUDDEBACK LUMBER CO., INC.,  
By S. A. CUDDEBACK.

MILTON, OREG., *March 23, 1956.*

Request you urge postponement of ICC service order 910 until further hearings. Ruling discriminatory and will adversely affect lumber operations in this area.

HARRIS LUMBER CO.

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MILTON, OREG., *March 23, 1956.*

Strongly protest ICC service order 910 reference transit shipments and urge postponement pending further hearings. Feel ruling discriminatory against medium and small lumber operators.

NATIONAL WOOD PRODUCTS SALES, INC.

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COOS BAY, OREG., *March 23, 1956.*

Regarding order 910 of the Interstate Commerce Commission regarding the transit shipping of lumber. Suggest you either do something about it or give the Big W and a couple of other operators all the rest of the timber in Oregon and stop the prolonged agony this will enforce on the smaller operators. We have difficulty enough procuring timber without having the Government cause us this further hindrance in shipments and sales. The transit operator is 100 percent beneficial to the small operator. We still, combined, employ more people and ship more lumber than the combined output of the big operator. We go on record as against order 910 and demand action on your part. It may be a cold November.

BLUE OX STUDS, INC.

T. W. KILKEY, *President.*

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EUGENE, OREG., *March 26, 1956.*

ICC service order 910 is smokescreen to ruin competitively small lumber producer who uses transit shipping only means selling product. It does not help car supply and overlooks railroads whose responsibility is to supply cars. Request your help.

TIMBERLANE,

R. B. TAYLOR.

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SAN FRANCISCO, CALIF., *March 24, 1956.*

At concluding session of annual meeting today, membership of Western Forest Industries Association, composed mainly of lumber manufacturers in Western States, expressed their astonishment at Interstate Commerce Commission procedure in issuing service order 910. Without apparent consultation with the hundreds of small mill operators in Western States, Commission through service order 910 threatens disruption of normal marketing procedures. Many small mills fear loss of market outlets. Many small operators question apparent ICC belief that order may help relieve car shortage. Clearly order needs careful reconsideration in light of facts and timber industry economics. Membership formally resolved to request ICC to suspend order 910 and to continue suspension at least until ICC has held public hearing in western Oregon and study hearing record. Further resolved to seek aid Governor Smith and Oregon congressional delegation.

LEONARD B. NETZORG,

*Acting Executive Vice President,*

*Western Forest Industries.*

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MEDFORD, OREG., *March 24, 1956.*

This company believes that service order 910 by the Interstate Commerce Commission is being discriminatory against small mill operators and transit shippers. Both are a necessary and vital organ of the lumber business. We wish you would put forth every effort to have above order rescinded or at least modified to expire by August 31 this year.

ALL TREES LUMBER CO.,  
HALE GREENMAN.

MEDFORD, OREG., *March 24, 1956.*

This company believes that service order 910 by the Interstate Commerce Commission is being discriminatory against small mill operators and transit shippers. Both are a necessary and vital organ of the lumber business. We wish you would put forth every effort to have above order rescinded or at least modified to expire by August this year.

TAYLOR BROS. LUMBER CO.,  
M. A. TAYLOR.

*Ashland, Oreg.*

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PORTLAND, OREG., *March 23, 1956.*

We respectfully urge your support in postponing effective date of ICC Service Order 910. This order will bring extreme hardships on an important part of the lumber industry. This order discriminates against transit shippers, both mills and wholesalers, as well as thousands of retail yards who rely on this method of doing business. We believe a hearing should be available as soon as possible to provide a compromise solution for the anticipated car shortage that will protect both the mills and wholesalers from financial hardships.

OREGON PACIFIC LUMBER CO.

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MARCH 23, 1956.

ReUrTel car service order 910. Am checking into this problem with ICC and will advise as soon as report is received.

Regards,

WAYNE MORSE, *United States Senator.*

Mr. Dana McBarron, Chapman Lumber Co., Grants Pass, Oreg.; Mr. Clyde Crenshaw, Dancren Lumber Co., Medford, Oreg.; Mr. J. P. O'Neil, Shamrock Lumber Co., Eugene, Oreg.; Teague Lumber Co., Eugene, Oreg.; Jacobsen Lumber Co., Eugene, Oreg.; Mr. W. J. Browne, Stoneyford Lumber Co., West Eugene, Oreg.; Mr. W. A. Swanson, Springfield, Oreg.; Mr. Joe Bricher, president, Daugherty Lumber Co., Cottage Grove, Oreg.; Eugene-Willamette Lumber Co., Eugene, Oreg.

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GRANTS PASS, OREG., *March 22, 1956.*

Feel that ICC service order 910 works untold hardship on large percentage of lumber shippers not represented by WCLA. Would appreciate all efforts you extend in accomplishing a postponement of this order until a hearing can be arranged that will allow this previously unheard group an opportunity to present our views. Appreciate your phoning Greenwood 6-6671 collect if you feel it will help to get personal viewpoint how it affects one shipper. Best regards.

CHAPMAN LUMBER CO.,  
DANA MCBARRON.

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MEDFORD, OREG., *March 23, 1956.*

We are very much opposed to ICC Service Order 910 effective April 9. Apparently this ruling was pushed through by the large operators in their efforts to purge the small mills and it almost kills small operators' method of merchandising their lumber. Having lumber in transit is about the only way small mills can compete pricewise with larged mixed-car shippers. Railroad men here in authority advise that this ruling will have little or no effect in alleviating the annual car shortage on Southern Pacific lines. We plead that you use your authority in getting a postponement on this ruling until after hearing is called.

Respectfully yours,

DANCREN LUMBER CO.  
CLYDE CRENSHAW,

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EUGENE, OREG., *March 22, 1956.*

Reference ICC Service Order 910. Please investigate as this order works a terrific hardship on the small sawmill operators and wholesalers in the State. More transit time is needed to properly merchandise small mill production. Would appreciate your efforts.

SHAMROCK LUMBER CO.,  
J. P. O'NEIL.

EUGENE, OREG., *March 22, 1956.*

We feel that ICC Service Order 910 is a singular order directed to transit lumber shipments, a method of merchandising 80 percent of the output of the smaller mills. This order is only a partial attempt to meet the problem relating to one of the minor factors contributing to seasonal car shortages, and results in a competitive disadvantage to the smaller operators in favor of larger operators. No opportunity was given to those directly affected to be heard prior to publishing of this order, nor was the Governor of Oregon's Emergency Car Supply Committee consulted. This order if carried out as written will result in chaos and disruption of long-established normal channels of lumber distribution. We respectfully ask your cooperation in rescinding or postponing the above service order until all the facts can be heard. Can we depend upon your support? Please advise by collect wire.

TEAGUE LUMBER CO.

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EUGENE, OREG., *March 23, 1956.*

Protest ICC Order 95.910 as discriminating against small business under guise of alleviating car shortage. This order was promoted by a few big lumber companies and stops an effective marketing procedure that both mills and retailers have depended on for a number of years.

JACOBSEN LUMBER CO.

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EUGENE, OREG., *March 23, 1956.*

We strongly protest Interstate Commerce Commission Service Order 95.910 railroad operating regulations for the movement of loaded freight cars. This discriminatory action is deplorable since it was passed without representation from the people it affects most. Please endeavor get postponement until the full effect of the order can be determined at a hearing as we believe it will result in chaos in the lumber industry.

W. J. BROWNE,  
STONEFORD LUMBER Co.,  
*West Eugene, Oreg.*

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SPRINGFIELD, OREG., *March 23, 1956.*

Believe you should investigate ICC Service Order No. 95.910 regarding transit carloads of lumber. I am satisfied that this order is discriminatory to transit lumber wholesalers and to small mills who are dependent on them for sales.

WALTER A. SWANSON,  
*Springfield, Oreg.*

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ROSEBURG, OREG., *March 28, 1956.*

Strongly recommend retentions ICC service order 910 which should also be extended to cover abuses of car detentions and delay in grain movements by Commodity Credit Corporation and private shippers. Also strongly urge support and passage Senate bill 2700. All loopholes should be closed in every way possible to avoid delays and abuses of rail cars by shippers and/or railroads to minimize threatened car shortage. Also urge all possible efforts toward building new boxcars.

EARL M. BLEULE,  
*General Sales Manager, Roseburg Lumber Co.*

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PORTLAND, OREG., *March 24, 1956.*

ICC Service Order No. 910 effective April 9 should have been enacted long ago. We are convinced that the car shortages that have plagued both shippers and railroads of the Northwest in the past can be contributed largely to the transit lumber shippers heretofore able to utilize long routes and other devices to slow delivery while securing orders. Millions of feet of lumber are warehoused in boxcars pending sales at no cost to the shippers. We believe further that ICC Service Order No. 858 limiting the time cars of lumber are allowed to remain at diversion points pending diversion orders should be reenacted. Oregon cannot afford a boxcar shortage this summer.

Respectfully submitted.

THE JEWETT CAMERON LUMBER CORP.,  
C. M. JEWETT, *President.*

PORTLAND, OREG., *March 24, 1956.*

Request your urgent support of ICC Service Order 910 designed to aid car supply in line with S. 2770 which you sent me earlier this month.

The ICC order could be further implemented by imposing the 72-hour limit at diversion points. Headline tonight's Oregon Journal "Rail Order Said Blow to Lumber." We cannot agree. All help needed to alleviate impending car shortage affecting not only our own Oregon lumber industry but general economy of the nation.

JOHN MANN COOPER LUMBER CO.

KANSAS CITY, MO., *March 27, 1956.*

Urge your support of ICC Service Order 910. Circuitous slowdown routings are reprehensible and add to the annual car shortage which is costly to lumber producer, dealer, and consumer. Your help will be greatly appreciated. Respectfully,

R. B. WHITE, *President,*  
Yoncalla Lumber Co.

EUGENE, OREG., *March 28, 1956.*

Dana McBarron's committee now in Washington will explain our views and reasons for opposition to service order 910.

W. J. BROWNE STONYFORD LUMBER CO.

PORTLAND OREG., *March 28, 1956.*

Leonard Netzorg and others on way to Washington for hearing. Mr. Netzorg will speak for us.

UNITED LUMBER CO., INC.

EUGENE, OREG., *March 28, 1956.*

Re your telegram order 910. Will have representatives and statements March 29 hearing. Thanks for your support.

TEAGUE LUMBER CO.

EUGENE, OREG., *March 28, 1956.*

Appreciate your wire regarding ICC order No. 910. As you have informed our representatives are on their way to Washington and will arrive this evening. We are wiring Senator Magnuson's committee outlining our stand on this important matter.

W. B. JOHNSON,  
*Eugene Willamette Lumber Co.*

Senator MORSE. In the past day or two I have talked to many Oregon lumbermen and I am satisfied that they make a strong prima facie case for postponement of the effective date of the order in order to afford all interested parties a hearing on the merits.

I spoke about my breakfast conference this morning. I want you to hear the story before the day is over. Here are shippers, sawmill operators, lumber brokers, here are men who have a common story as to the devastating effect on the small mills of Oregon of order 910. I want to say that before the Interstate Commerce Commission issues an order like that, they ought to at least get their facts from the mouths of the people who are going to be affected thereby. And they ought to have given them the benefit of a hearing.

In view of the fact that they didn't, Mr. Chairman, it is my request and petition to this committee that this committee give them a hearing and that this committee make clear to the Interstate Commerce Commission that it wants that order suspended until these people can be heard as to the effects of this order upon their business.

The wording of the order is very plausible. The arguments that the Interstate Commerce Commission in the first instance will make—I know what those arguments are—sound very plausible because they point out that they are going to get cars back, they think, quicker under this order.

Let me tell you, these lumbermen will tell you it plays right into the hands of the Southern Pacific Railroad, and it is going to put the Southern Pacific Railroad in a position where, by not so much subterfuge and indirection at that, they can take these cars, the so-called long way around, and they are not going to get the time saving that the Interstate Commerce Commission witnesses will tell you. And that is why I want these rebuttal witnesses put on the stand in regard to that, because I think that you can just make a sieve out of the arguments of the Interstate Commerce Commission officials on this matter, judging from what has been told me by these small lumber operators in the State of Oregon.

The problem, Mr. Chairman, is so serious and it has been presented to me in such convincing fashion that I feel it would be a mistake for the Commission to proceed with order No. 910 without having received the views of both sides. Therefore, I urge this committee to communicate immediately with the Commission asking for a postponement of the April 9 effective date of the order in question.

#### BOXCARS SHOULD NOT BECOME MOBILE GRAIN ELEVATORS

Many people with whom I have conferred on the car shortage contend that Commodity Credit Corporation shipments of grain during the period of high demand for boxcars intensify the problem.

For example, I am told that the inadequacy of permanent storage facilities in the Grain Belt has in effect caused large sums of freight cars to become mobile grain elevators.

This in turn has caused delay in the transfer of such boxcars to other parts of the country, including the Pacific Northwest. The complex problems of the freight-car shortage have been heightened by the fact that the demands for grain and lumber shipping space too often coincide. It is quite likely that the Government can establish periods of grain movement which do not conflict with the periods at which lumber shipments are the heaviest.

Senator SCHOEPPPEL. I might say, if the Senator does not mind my breaking in—

Senator MORSE. I welcome it.

Senator SCHOEPPPEL. With reference to this freight movement in these cars, we have had considerable complaints presented to us, those of us in the grain area, on this very situation. On numerous occasions the Senators have gone into it in the hope for some different relationship, shall I say, some different method of handling their shipments out of these storage places be at other times rather than in the peak loading time that we are confronted with at the harvest season by the advent of the combine. And it has caused serious dislocations.

Obviously I can see where in a number of instances, probably thousands of instances, the problem that the railroads are confronted with is that the railroad cars are used for storage units in transit to these places and piling up in some of the yards, necessitating embargoes in some cases.

Senator MORSE. I am glad to have that testimony, Mr. Chairman, because it is identical with information that has been presented to me by shippers. And there is another phase of it that I haven't had time to run down yet, and I wasn't going to comment on it, but in view of your comments I will comment on it and we can find out what the facts are.

It has been represented to me that we have another problem with the Commodity Credit Corporation in regard to grain shipments in that they refuse to let grain be moved in trucks that are going back empty, we will say.

A truck leaves Portland, Oreg., and goes to St. Paul, Minn., then goes back empty and goes by the Commodity Credit Corporation storage elevators and bins. But the Commodity Credit Corporation, I am advised, has a policy of requiring that the grain be shipped by freight car, by boxcar, and not by truck in many instances.

If that is true that is a great waste of transportation facilities. I am for subsidizing the railroads to the extent that they need to be subsidized to give the people of this country adequate transportation service.

But I am not for that kind of a subsidy if the facts are as they have been alleged to be in representation to me.

I think we ought to find out what the Commodity Credit Corporation does by way of regulation in connection with any shipment of grain in trucks, and under what circumstances, if any, they prohibit the shipment of grain in trucks and require the shipment only by railroad.

Insofar as the demand for grain shipping space amplifies the shortage of rail transportation for lumber, an indirect solution might be worked out through an accelerated Federal program of increasing grain storage facilities coupled with a more realistic plan for disposal of our surplus grain to hungry people in friendly foreign nations.

It seems to me that the committee could explore to the advantage of public, shippers and the railroads themselves, some of the following suggestions relative to car shortages:

(1) Increase demurrage charges to discourage delay in car movements.

(2) Reduce to a minimum empty cars held for loading.

(3) Place embargoes against consignees who accumulate cars.

(4) Repair defective cars promptly.

(5) Load cars promptly and as heavily as possible.

(6) Increase the supply of new cars.

In conclusion, I suggest that the Government has perhaps relaxed its vigilance of former years in the field of railroad transportation. The time appears to be opportune for closer analysis of the whole subject of real transportation.

Our economy is becoming too complex to permit extended delay in this respect. There is much to be gained by a determination as to whether existing freight handling practices of the American railroads is efficient, economic, and in the interest of the American public.

The Senate Committee on Interstate and Foreign Commerce can do immeasurable good in calling to the attention of Government agencies and the public the adverse economic effects of the constantly recurring freight-car shortages and in suggesting affirmative action on

the part of the carriers and the Federal Government in correcting this condition.

Mr. Chairman, I deeply appreciate the opportunity to make this opening statement. I want to say to the committee that I shall meet with the committee in executive session at its convenience for further representations as to what I think needs to be done in connection with either public or executive hearings with some officials of the Interstate Commerce Commission in regard to some of these problems, because I don't want to take the time at this hearing to do the examining that I desire to do.

I serve notice now that I am going to ask the Interstate Commerce Committee for permission to have called before it some of these Interstate Commerce Commission officials for some questions that I want to put to them at a later date in regard to this problem, because I cannot emphasize too strongly—and I speak for my colleague as well—what is happening to the economy of the State of Oregon, with lumber its No. 1 source of economic income, what is happening because of this constantly repeated boxcar shortage.

It means millions of dollars to the people of my State. And I don't intend to sit by in the Senate idle and let that cost accumulate to the taxpayers, the people of my State.

They have the right to a remedy from the Congress of the United States, and I am going to make a fight for that remedy, and I am going to insist in the first instance that the Interstate Commerce Commission officials be brought before us for a thorough consideration of this matter in executive session, if it is the pleasure of the committee, or in public session at a later date if that is your desire.

Thank you very much.

Senator SCHOEPEL. I will say to you, Senator Morse, that these matters will be brought to the attention of Senator Magnuson immediately upon his return, and your request is noted in the record.

I appreciate having your views in this matter this morning.

At this juncture in the testimony I want to submit for the record a letter directed to me, as acting chairman of this hearing today, by Senator Milton Young, who is in favor of S. 2770 as set forth in the communication.

(The letter is as follows:)

UNITED STATES SENATE, *March 28, 1956.*

HON. ANDREW F. SCHOEPEL,

*United States Senate, Washington, D. C.*

DEAR ANDY: It is my understanding that the Senate Interstate and Foreign Commerce Committee will conduct hearings very soon on S. 2770.

Farmers in my State are very interested in this legislation. For years we have been plagued with a drastic shortage of boxcars during the harvest season. This was understandable during the war and the years immediately following. However, there is no reason for this situation to exist today. It is impossible to estimate the financial loss to farmers caused by this shortage of boxcars and the resulting inability to get their grain to market.

This bill, I think, will be of some assistance in correcting this situation. I am hopeful, therefore, that your committee will act favorably on S. 2770.

With warmest personal regards,

Sincerely yours,

MILTON R. YOUNG.

Senator SCHOEPEL. Senator Case, we will be glad to hear you on this matter now if you desire to be heard. I know you have some other matters that you want to attend to.

**STATEMENT OF HON. FRANCIS CASE, A UNITED STATES SENATOR  
FROM THE STATE OF SOUTH DAKOTA**

Senator CASE. Mr. Chairman, I appreciate this opportunity to present a statement with this committee in support of bills aimed at alleviating the boxcar shortage situation.

The problem of distribution of boxcars is a recurrent one. It is tied to periods of high business activity, to years of big farm crops and varies from section to section around the country.

In checking back through the records I find that in almost every year since 1947, following the war utilization machinery that was set up, the problem has been brought up and discussed in some way or another and bills and resolutions have been offered in both the House and the Senate.

In more recent times, the situation came to the point where last summer this committee held hearings for 2 days on the subject.

The problems in my State are those of boxcars for grain and are critical during the times when last year's grains are being moved from CCC stocks and when the current crop is being harvested. The problems are those of originating lines where loadings materially exceed unloadings.

It has been said that shortages occur because it is cheaper to rent cars than to own them. As long as a railroad can rent cars to meet its peak loading demands, there is no incentive to provide itself with sufficient cars or its fair share of the national stock.

One approach to the problem is the per diem charge increase that is incorporated in the bills under study now. The increase should be sufficient to cover, fairly and fully, the cost of car ownership.

At this time I would like to call the attention of the committee to S. 3509 which I recently introduced. In addition to providing this authority to the Interstate Commerce Commission in time of emergency or threatened emergency, this bill calls for a reversed demurrage charge to protect the shipper.

This reverse demurrage system would operate at the same time as the increased per diem charges. The bill would give the necessary authority to the Commission to determine the charges necessary.

The latter part of the bill dealing with car rentals, per diem, and car hire follows the lines of those requested by the Commission. The portion concerning the reverse demurrage charges is a new approach.

Reverse demurrage could have two very good effects. One, it would provide a form of protection and compensation to the shipper who had bona fide loadings and who properly orders the cars from his serving line. Second, it would operate at a time when the increased per diem rates were effective so it would pass the additional charges on to the line holding the cars, thus placing the additional charges directly upon the responsible line.

In South Dakota losses are suffered from the shortage of boxcars in many ways, most important of which is the blocking of elevators, thus disrupting a farmer's delivery schedule. This can be extremely important, particularly if he is selling direct from the combine.

It would also give some form of compensation to the operator who would have to dump grain in the open on the ground, thereby suffering losses from contamination and spoilage.

Safeguards would have to be written by the Commission to protect the rail lines from unethical shippers who might seek to infringe upon the reverse demurrage system.

Action is essential. Hundreds of letters and telegrams in my office from years past indicate the problem is recurrent and serious.

I urge the committee to give consideration to the bill to provide for the increased per diem, car rental, and car hire problem, as well as the reversed demurrage charges to provide some measure of protection to the shipper in cases where he is being taxed for the inability or lack of desire of the transportation system to correct faults that exist.

I would like to make a bit of comment and call attention, by way of emphasis, to a portion of Commissioner Clarke's statement which has already been presented. At page 3 of his statement, he said:

Car shortages occur because a few railroads consider it cheaper to rent cars than to own them. With the earning value of an average freight car many times the current per diem charge of \$2.40, the temptation is strong among certain railroads, and especially those having little or no ownership, to appropriate the equipment of other carriers for their own use.

I want to comment that the word "temptation" is not strong enough. It is practically a command from a fiscal standpoint that if you can rent a car for a per diem of \$2.40 a day, that they do that rather than build an adequate number of cars.

Mr. Clarke said:

So long as a railroad can fulfill its common carrier responsibility with rented equipment, it has not economic incentive to provide its fair share of an adequate car supply.

In fact, Mr. Chairman, the incentive is entirely the other way. And he is correct in saying that the inevitable result is that an adequate supply is never acquired.

Then he says, and I suppose this is for the Commission:

We believe that the best long-range cure for this unsatisfactory condition is a penalty per diem charge that will furnish a pecuniary spur to deficit railroads to acquire sufficient cars at least to take care of their own loading obligations.

In 1951 I introduced a bill in the first session of the 82d Congress. It was S. 1018. I will not read it all but would like to insert it in the record. It reads—

That paragraph (14) (a) of section 1 of the Interstate Commerce Act (49 U. S. C. 1 (14) (a)) is amended by adding at the end thereof the following: "The Commission shall, in establishing the rates of such compensation, take into account the then current replacement cost of the equipment for the use of which the compensation is to be paid, and shall revise such rates from time to time in order to reflect increases or decreases in such cost."

Then, on the 22d of March this year, legislative day March 19, I introduced in the second session of the 84th Congress the bill S. 3509, which was designed to supplement the bill which the Senate Committee on Interstate and Foreign Commerce is considering, that is S. 2770, by Chairman Magnuson. My bill, S. 3509, would be a little more specific and would introduce another feature in the authority which the Interstate Commerce Commission would have by inserting immediately before the last sentence of such paragraph 15 a new sentence as follows:

In addition to any other action which it may take under this paragraph, when the Commission is of the opinion that a shortage or threatened shortage of cars has created an emergency or threatened emergency in any section of the

country, the Commission, in accordance with such regulations as it shall prescribe, (i) may require, in any case where a shipper has made a bona fide requisition of cars and has cargo awaiting cars, and the serving carrier does not furnish the requisitioned cars within 10 days, that the carrier pay to the shipper a reverse demurrage at a rate determined by the Commission.

At that point I want to make a comment. This reverse demurrage system would operate at the same time as the increased per diem charge. The bill would give the necessary authority to the Commission to determine the charges necessary. That is a different proposal, I think, than the blanket authority that would be proposed by S. 2770.

It should be noted that the shipper would have to make a bona fide requisition and should have cargo awaiting the cars. And that the carrier would have 10 days to get the cars without the reverse demurrage being effective. It would put some teeth into the situation so that there would be a real effort to provide the cars.

In addition to that, S. 3509 suggests, second, that the Commission—may require, in any case where a shipper (including the United States), after receiving a car by requisition, holds such car for use, or uses such car as a warehouse or storage facility—

such as this temporary warehouse or storage facility that Senator Morse mentioned—

that the shipper pay to the carrier owning the car such per diem penalty as the Commission may determine;

that is, we ought not to permit shippers, either, to use the cars for warehouse facilities to the detriment of the shipping as such.

Third, that the Commission may provide for the routing of traffic in such manner as to insure the minimum per diem use of cars to destination; and (iv) may, if a carrier has foreign cars on its lines, assess against such carrier such charges (in addition to the care-hire, car-rental, or per diem charges, or mileage rates then in effect) as in the opinion of the Commission are reasonably calculated to relieve such shortage or threatened shortage by promoting the expeditious movement, distribution, interchange, or return of cars, and the additional charges shall be paid by the carrier using such cars to the owners thereof.

The fourth clause is somewhat analogous to the provisions of S. 2770. The portion concerning reverse demurrage is a new approach. It could have two good effects. One, it will provide a form of compensation for the shipper who has bona fide loadings.

Second, it would operate at a time when increased per diem rates were effective, so that it would pass the additional charges on to the lines holding the cars, thus placing the charges directly upon the responsible line. It seems to me that you have to give the Commission the authority to make any charges effective and make them fit at a place where the responsibility rests.

Mr. Chairman, I would like to complete my presentation by offering for the record a tabulation on boxcar loadings for 1955-56 to date, as far as we have it in March.

The figures on the ownership, the weekly loadings, the average daily surplus and the average daily shortages. I might just say, by way of mention here, that the average daily shortages for 1955 were 5,264 as against the loadings and the ownership.

Senator SCHOEPEL. We will include those in the record. There have been inserted other figures into the record. I do not think that there will be entirely a duplication.

Senator CASE. I don't want to burden the record, if there is a duplication.

Senator SCHOEPPEL. We will include it in the record, however. It may add additional information which will be beneficial to the committee.

(The tabulations referred to above are as follows:)

*Boxcar loadings, 1955-56*

| 1955                     | Ownership | Weekly loadings | Average daily surplus | Average daily shortages |
|--------------------------|-----------|-----------------|-----------------------|-------------------------|
| Jan. 8.....              | 717, 013  | 266, 944        | 10, 340               | 84                      |
| Jan. 15.....             |           | 288, 861        | 10, 727               | 203                     |
| Jan. 22.....             |           | 288, 039        | 10, 164               | 693                     |
| Jan. 29.....             |           | 287, 540        | 8, 928                | 589                     |
| January average.....     | 717, 034  | 282, 846        | 9, 995                | 400                     |
| Feb. 5.....              | 716, 739  | 288, 871        | 8, 183                | 336                     |
| Feb. 12.....             |           | 288, 454        | 6, 827                | 687                     |
| Feb. 19.....             |           | 294, 728        | 6, 898                | 761                     |
| Feb. 26.....             |           | 282, 342        | 4, 870                | 896                     |
| February average.....    | 716, 866  | 288, 599        | 6, 306                | 688                     |
| Mar. 5.....              | 717, 127  | 303, 623        | 4, 049                | 1, 209                  |
| Mar. 12.....             |           | 303, 133        | 3, 523                | 1, 339                  |
| Mar. 19.....             |           | 301, 375        | 3, 103                | 1, 407                  |
| Mar. 26.....             |           | 289, 529        | 2, 728                | 1, 380                  |
| March average.....       | 717, 455  | 299, 415        | 3, 244                | 1, 378                  |
| 1st quarter average..... | 717, 115  | 290, 286        | 6, 432                | 839                     |
| Apr. 2.....              | 717, 361  | 301, 489        | 2, 808                | 1, 604                  |
| Apr. 9.....              |           | 291, 588        | 2, 124                | 1, 579                  |
| Apr. 16.....             |           | 291, 863        | 2, 217                | 1, 427                  |
| Apr. 23.....             |           | 301, 163        | 2, 571                | 1, 938                  |
| Apr. 30.....             | 717, 493  | 307, 301        | 2, 272                | 2, 622                  |
| April average.....       | 717, 427  | 298, 680        | 2, 335                | 1, 869                  |
| May 7.....               | 716, 457  | 303, 869        | 1, 840                | 3, 581                  |
| May 14.....              |           | 308, 448        | 1, 463                | 3, 838                  |
| May 21.....              |           | 310, 017        | 3, 927                | 3, 598                  |
| May 28.....              |           | 315, 748        | 4, 412                | 4, 446                  |
| May average.....         | 716, 557  | 309, 520        | 3, 093                | 3, 996                  |
| June 4.....              | 716, 653  | 278, 812        | 5, 287                | 5, 557                  |
| June 11.....             |           | 313, 893        | 4, 496                | 5, 755                  |
| June 18.....             |           | 314, 557        | 2, 768                | 5, 974                  |
| June 25.....             |           | 320, 097        | 980                   | 7, 126                  |
| June average.....        | 716, 779  | 306, 840        | 2, 760                | 6, 598                  |
| 2d quarter average.....  | 716, 921  | 304, 526        | 2, 730                | 4, 154                  |
| 6 months average.....    | 717, 018  | 297, 691        | 4, 657                | 2, 518                  |
| July 2.....              | 716, 617  | 331, 055        | 290                   | 9, 045                  |
| July 9.....              |           | 264, 198        | 284                   | 11, 006                 |
| July 16.....             |           | 326, 619        | 234                   | 11, 356                 |
| July 23.....             |           | 324, 718        | 217                   | 11, 600                 |
| July 30.....             | 716, 827  | 325, 379        | 224                   | 11, 114                 |
| July average.....        | 716, 722  | 314, 394        | 244                   | 11, 097                 |
| Aug. 6.....              | 716, 544  | 307, 864        | 185                   | 9, 871                  |
| Aug. 13.....             |           | 309, 165        | 299                   | 8, 319                  |
| Aug. 20.....             |           | 306, 952        | 272                   | 7, 281                  |
| Aug. 27.....             |           | 305, 012        | 338                   | 6, 529                  |
| August average.....      | 716, 655  | 307, 248        | 290                   | 7, 767                  |
| Sept. 3.....             | 716, 874  | 312, 965        | 419                   | 5, 901                  |
| Sept. 10.....            |           | 265, 210        | 421                   | 6, 234                  |
| Sept. 17.....            |           | 321, 337        | 461                   | 7, 205                  |
| Sept. 24.....            |           | 324, 983        | 512                   | 9, 854                  |
| September average.....   | 716, 899  | 306, 124        | 415                   | 7, 754                  |
| 3d quarter average.....  | 716, 759  | 309, 651        | 316                   | 8, 859                  |
| 3 quarters average.....  | 716, 931  | 301, 783        | 3, 119                | 4, 668                  |

*Boxcar loadings, 1955-56—Continued*

| 1955                     | Ownership | Weekly loadings | Average daily surplus | Average daily shortages |
|--------------------------|-----------|-----------------|-----------------------|-------------------------|
| Oct. 1 .....             | 716, 824  | 325, 716        | 236                   | 10, 626                 |
| Oct. 8 .....             |           | 318, 647        | 181                   | 11, 956                 |
| Oct. 15 .....            | 716, 978  | 325, 460        | 137                   | 11, 349                 |
| Oct. 22 .....            |           | 327, 598        | 53                    | 11, 636                 |
| Oct. 29 .....            |           | 330, 033        | 72                    | 12, 507                 |
| October average.....     | 716, 901  | 325, 491        | 116                   | 11, 808                 |
| Nov. 5 .....             | 716, 712  | 322, 059        | 122                   | 11, 684                 |
| Nov. 12 .....            |           | 314, 393        | 275                   | 9, 891                  |
| Nov. 19 .....            | 716, 767  | 306, 273        | 265                   | 7, 020                  |
| Nov. 26 .....            |           | 263, 695        | 325                   | 7, 213                  |
| November average.....    | 716, 730  | 301, 605        | 287                   | 8, 178                  |
| Dec. 3 .....             | 716, 249  | 298, 424        | 557                   | 3, 155                  |
| Dec. 10 .....            |           | 294, 750        | 517                   | 1, 221                  |
| Dec. 17 .....            | 716, 334  | 292, 283        | 497                   | 1, 242                  |
| Dec. 24 .....            |           | 273, 740        | 493                   | 1, 053                  |
| Dec. 31 .....            |           | 228, 340        | 924                   | 757                     |
| December average.....    | 716, 291  | 277, 507        | 602                   | 1, 300                  |
| 4th quarter average..... | 716, 644  | 301, 529        | 339                   | 7, 022                  |
| 1955 average.....        | 716, 862  | 301, 714        | 2, 415                | 5, 264                  |
| <i>1956</i>              |           |                 |                       |                         |
| Jan. 7 .....             | 716, 845  | 245, 999        | 1, 251                | 601                     |
| Jan. 14 .....            |           | 294, 573        | 1, 684                | 1, 416                  |
| Jan. 21 .....            | 716, 801  | 291, 318        | 1, 483                | 1, 787                  |
| Jan. 28 .....            |           | 290, 285        | 1, 387                | 2, 208                  |
| January average.....     | 716, 823  | 280, 544        | 1, 448                | 1, 590                  |
| Feb. 4 .....             | 717, 712  | 288, 207        | 1, 317                | 1, 965                  |
| Feb. 11 .....            |           | 290, 195        | 980                   | 2, 105                  |
| Feb. 18 .....            | 717, 749  | 297, 895        | 800                   | 2, 419                  |
| Feb. 25 .....            |           | 290, 227        | 817                   | 2, 974                  |
| February average.....    | 717, 730  | 291, 631        | 962                   | 2, 579                  |
| Mar. 3 .....             | 717, 685  | 304, 741        | 1, 090                | 3, 594                  |
| Mar. 10 .....            |           | 301, 372        | 708                   | 3, 834                  |
| Mar. 17 .....            |           | 298, 462        | 748                   | 3, 848                  |
| March average.....       | 717, 685  | 301, 525        | 789                   | 3, 800                  |
| 11-week average.....     | 717, 413  | 290, 298        | 1, 112                | 2, 466                  |

Source: Interstate Commerce Commission.

Senator CASE. I doubt if there is any other problem with which this committee deals which has the potential of contributing to the economic welfare of certain industries as this legislation may. The lumber situation which the Senator from Oregon mentioned exists to a certain extent in South Dakota. We have a considerable timber industry in the Black Hills. The shortage problem affects that, too. But our primary interest, of course, is South Dakota in car loadings, car shortages, is that which grows out of the agricultural industry and, as the chairman so very aptly noted, since the advent of the combine the problem of car shortages has a new significance in my state.

When you harvest with combines it means that the grain comes down in a relatively short period of time. We don't do very much shock threshing any more, and much less thresh out of stacks where the grain harvest was spread over a long period of time. Combines are largely used in the harvesting of all of these small grains. That means a heavy burden at a particular period of time. It takes planning in routings, but it first of all takes the cars. You just can't, by routing

alone, provide the cars unless the cars are available. If they are diverted to other haulings because some railroads find it cheaper to rent them than to own them, and if they are used as warehouses rather than as carriers, the shortage can never be met.

Therefore, I do applaud the efforts of this committee to attack the problem, and I hope you come up with some legislation, with some real teeth in it, that will give the Commission the effective methods and instruments with which to meet the situation.

Senator SCHOEPEL. Thank you for your presentation here this morning, Senator Case.

I might say at this juncture, I think it is apropos that some reference should be made to it, from the standpoint of the Midwest and the mid-western railroads. I have frequently had it drawn to my attention, both as a member of this committee and in connection with my responsibilities in the United States Senate, that a number of these railroads in the great agricultural areas have built a lot of new cars that are grain-type cars, all out of proportion to what the building of new cars has been in other sections of the United States.

They get these cars, which are often tied up in other areas. During these periods of mass movement of agricultural commodities it does place these railroads that have built grain-type cars, who have them available, in a rather embarrassing and difficult position.

We have felt that there should be some approach to solution of this problem. It obviously is not exactly chargeable to the railroads in certain of the areas that indulge in the greatest movement of agricultural products. But they find themselves caught in this mesh where it is easier to rent a car than it is to build it, and the agricultural section of the country gets caught in a squeeze on this.

I think these hearings will probably be very helpful, together with some findings and some investigations that we can make as to how the CCC has been handling these matters and could handle them if they take these things into consideration.

Senator CASE. I want to thank the chairman for that statement because it shows that he has a realization of a very important aspect of the whole problem.

Senator SCHOEPEL. I thank the Senator.

Senator Mansfield, you are No. 1 on the list, but I understand you were detained. We will be glad to hear from you now.

#### **STATEMENT OF HON. MIKE MANSFIELD, A UNITED STATES SENATOR FROM THE STATE OF MONTANA**

Senator MANSFIELD. Mr. Chairman, and members of the committee, I am delighted to appear before the committee in behalf of S. 2770 because I believe that this bill if it becomes law will give the Interstate Commerce Commission the authority to meet a seasonal crisis in the wheat-producing areas of the Nation, which has become more serious over the years.

Each year as the grain harvest of the late summer and early autumn gets underway, Senators and Congressmen of the farming States are flooded with telegrams protesting the shortage of boxcars to carry the grain to market.

The car shortage has become worse each year and the seriousness of the situation is felt the most during the harvest season in Mon-