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Handbook for Establishment of Shippers' Associations

Applicability and Procedure

August 1984

Handbook for Establishment of Shippers' Associations: Applicability and Procedure

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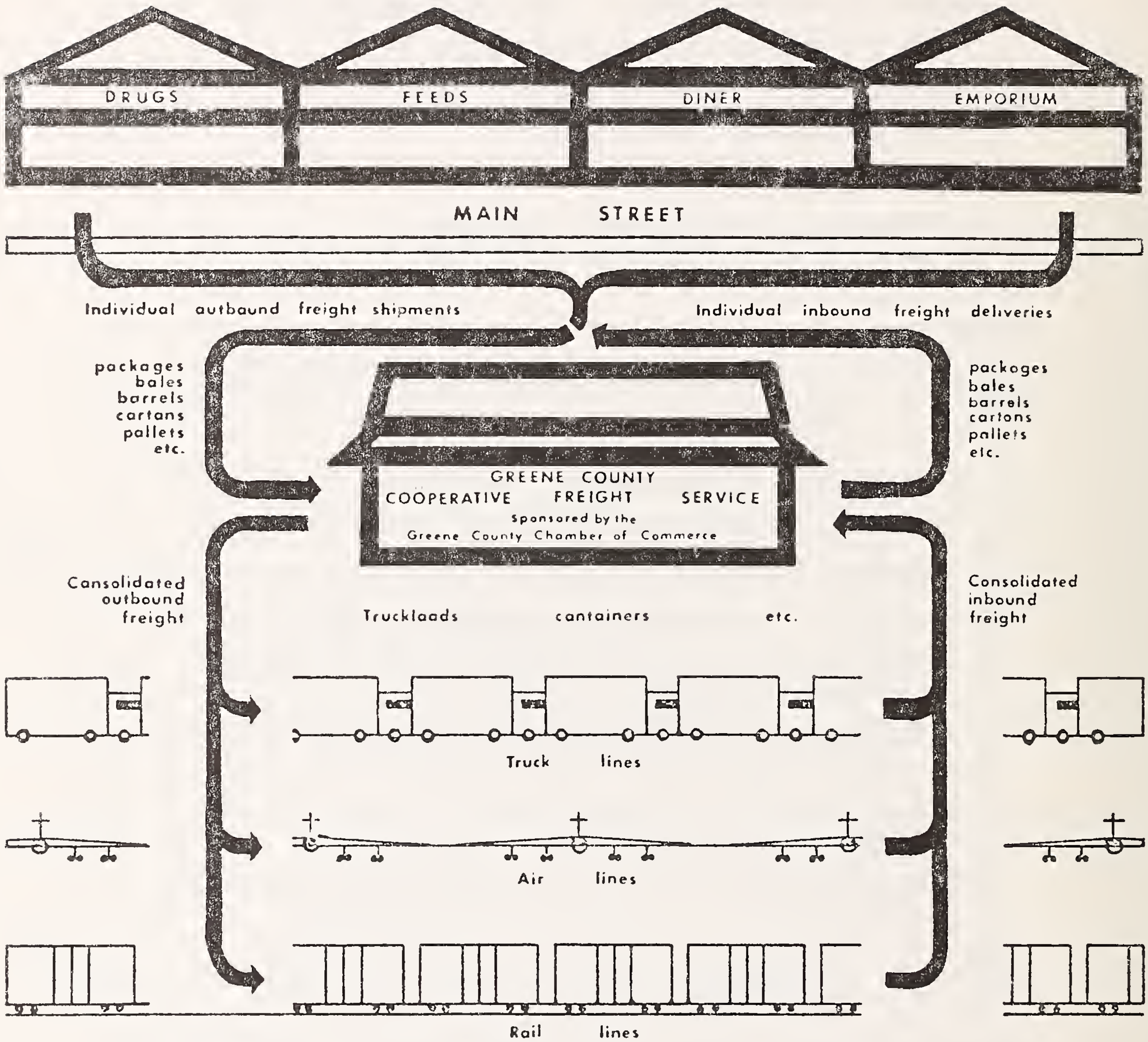

- Artists Drawing -
Flow Patterns of a
Hypothetical (i.e. "Greene" County)
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Part I

Introduction to the Handbook

Purpose of the Handbook

This handbook is a manual that sets forth the many considerations relating to the formation and maintenance of a cooperative shippers' association. Its purpose is to make this information available to relatively small volume or occasional shippers whose plants are situated closely enough to one another to make coloading of shipments--inbound or outbound--feasible. The concept of coloading to achieve larger tonnages that can command lower unit freight rates is the paramount motivation of any shippers' association.

Shippers in low traffic density areas who are concerned with high freight charges and low quality service and who are seeking a method to combat the threats of service restriction or rate surcharges that may result from deregulation should be interested in the benefits that shippers' associations may provide under favorable conditions. This cooperative activity may be especially desirable for the smaller, off-route shipper who is looking for a viable alternative to the trend of increasing freight costs. Other businesses that are seeking to hold down transportation costs and to obtain better service, both of which may result from intelligent coloading, also may be interested in this handbook.

The current regulatory and economic directions of motor and rail service and the potential results for the smaller shipper are set forth in this manual. It also contains a specific analysis of the possibility of shippers' associations as economical, viable and operationally effective alternatives available to shippers everywhere who are able and willing to utilize this form of endeavor.

In addition, emphasis is placed on "what not to do" because, unfortunately, what may be successful in one association may not be possible in another. A shippers' association is not in itself a "blanket" alternative for all problem situations confronting the nation's shippers.

After reading the handbook, the reader will become aware that there are collective actions that can be taken to improve the position of many low traffic density shippers. The author conveys his best wishes for a successful operation for those who will try to start a shippers' association, once they have studied this manual.

Content of the Handbook

The handbook is designed to provide constructive answers to four basic questions arising in the shipping industry: (1) Why are changes in the pattern of shipping arising currently? (2) What can be done by the small shipper to adjust to changing shipping patterns? (3) How can shippers' associations serve as an alternative for individual shippers, and (4) How can the benefits and costs of a shippers' association be measured for a specific shipper?

Part II provides a brief look at the structure of for hire freight service as it affects low density shippers in the United States.

Over time, the smaller shipper may be faced with increasing costs for services provided and lower quality of service at the margin.

Part III is devoted to discussing recent transportation legislative changes and the likely impact on the smaller shipper. The new era of transport deregulation seems to indicate that carriers may be allowed to move away from some high cost, low density areas to concentrate their service activities where the specific companies can earn a profit with fewer transport options.

Part IV of the handbook discusses the legality and the growth of shippers' cooperative associations as well as their present general status. Interested shippers, however, are encouraged to seek out and talk with people involved in associations. Individuals currently involved with associations almost invariably will be helpful to shippers who show a genuine interest in this movement.

Joining or starting an association involves careful and explicit planning to ensure that participation in the association is in the interest of a particular shipper and that the association is provided sufficient resources.

Parts V and VI go into extensive detail about the structure and operating patterns of successful associations.

There is no perfect formula to follow in forming a new association because the territory to be served, the number of members and the size of each association can be different. This manual offers guidelines for maintaining an association and examples of steps taken which have been helpful in past situations.

Potential Users of the Handbook

This handbook primarily addresses individuals and community service agencies interested in the economic and community development of low traffic density sectors of the United States.

The manual may hold interest for:

1. Shippers - individually

2. Shippers - in groups

3. Business leaders with broad community interests such as:

   a. banks
   b. insurance companies
   c. specific trade association leaders

4. Community development leaders

   a. local government officials
   b. chambers of commerce
   c. development authority groups
   d. area planning and development commissions

5. State and regional governmental bodies

   a. state development commissions
   b. local and regional representatives of Federal agencies, such as the Departments of Commerce, Labor, Welfare, Agriculture and Transportation.

The Essential Ingredients

There is a real potential for community self-help in solving the transportation problems of low traffic density shippers. Shippers' associations can be a workable alternative to the high shipping costs and relatively poor service which often beset small scale or occasional shippers and which may be made worse over time by withdrawal of regulatory oversight of and significant involvement in the movement of specific freight shipments. This does not imply that some element of government overseeing may not be desirable even if shippers' associations in small towns and rural areas become commonplace. Rather, it involves a recognition that in the future specific government support may be available only when the shipping public can "prove" that it cannot get adequate relief through its own or some element of nongovernmental collective effort.

Awareness of Shipper Service Problems

In the 19th century, as rail systems proliferated and competing service became available at many significant commercial centers, the larger shippers developed traffic departments that often became quite adept at protecting the interests of their companies. In fact, rebating to powerful companies became so troublesome and notorious that specific legislation was passed to outlaw this practice. The work of the major traffic departments continued, however, and as trucking emerged on the national scene, these departments made effective use of this new competitive service.

Many smaller shippers and especially those in more isolated areas were uninformed or unable to avail themselves of traffic management services, and they fell into the habit of paying whatever they were charged by the most available or most visible carrier.*

This pattern was not particularly troublesome when fuel was cheap and trucking was in the hands of local or regional carriers who had a commitment to the area and the companies they served.

The recent energy crisis and transportation deregulation have changed the national picture almost completely. Costs of service have skyrocketed and the Interstate Commerce Commission no longer attempts to hold to its old stance of trying to require equal rates and service to all similarly placed shippers of like commodities.

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*Lack of operational knowledge on the part of relatively small scale shippers continues to be a problem. Appendix C is intended to help remedy this situation. It is a Manual for Small Shippers and a Glossary of Shipping Terms. It has been adapted from a similar work prepared by the American Retail Federation and is used with their permission.

In this new climate, the smaller shipper in more isolated areas is being left more and more to his own devices and in many cases the shipper is finding that individual action is of little value in either controlling costs or securing service on a timely basis.

Willingness to Seek Help on a Cooperative Basis

In situations of this kind, neighborhood cooperation and community self-help offers an appropriate avenue of relief. If groups of shippers in smaller towns or isolated areas come together to form consolidated shippers activities, and if not-for-profit shippers' (or receivers) associations can be formed and effectively managed, some relief from high rate charges or poor service or perhaps both can be provided to shippers in these areas.*

Thus, geographically based (a county or group of counties) shippers' associations might become effective traffic managers for their member shippers/receivers. Under favorable circumstances transportation service would be provided at a lower cost commensurate with the present transport structure and at the best available level of performance.

This handbook is intended to encourage individual shippers as well as Chambers of Commerce, local or regional development commissions and/or county governing officials to study the potential net benefits of a shippers' association.

No shipper, in circumstances outlined above, should wish to sit back and wait to be "bailed out" by the local government or Chamber of Commerce. The shipper who feels the pinch of higher cost and poorer service must carefully consider his case. He may decide to seek to enlist the support of other shippers, as well as his community leaders, in searching for workable alternatives available to help resolve the continuing problems of high transport cost and undesirable levels of service availability.

Information Sources and Procedures in Compiling the Handbook

A major portion of the information for the handbook came from individual shippers, managers, professors of transportation and traffic management and business and community leaders closely associated with shippers' associations. Questionnaires were sent to smaller shipper associations and managers to gain cross-sectional data on rates, size of staff and shipping volumes.

Through seminars, the researchers were able to gain information on the organizational strategies and individual association reports on the benefits and costs received from joining or organizing an association. Also, the opinions of the smaller shipper, association manager or receiver were actively solicited. The seminars were scheduled regionally to obtain cross-sectional opinions and suggestions on the feasibility of shippers' association strategy.

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*Cooperative farm organizations which provide shipping services and rurally based shippers' associations may have much in common. The similarities in these organizations, both in operational and legal patterns, is considered carefully in Part II, p. 11-14.

Other valuable sources of information have been documents, government studies, papers on the topic or shippers' associations and association publications. Many of these sources are mentioned in this handbook; however, no attempt is made to include a definitive list of references dealing with the shippers' association movement.

Funds for travel involved by the researchers and their time and efforts were provided in two phases. The first phase was under the auspices of the office of University Research; U.S. Department of Transportation, and the work was started at Georgia State University in Atlanta. The second stage was funded by the Rural Policy Section, U.S. Office of Transportation, in conjunction with the U.S. Department of Agriculture through the Agricultural Extension Service at North Carolina State University in Raleigh, North Carolina. Although these agencies financially supported the project, the author is solely responsible for the handbook's content, conclusions, errors or omissions.

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PART II - FREIGHT TRANSPORTATION MANAGEMENT AND CONTROL

The Era of rail transportation dominance began to decline early after World War I. The automobile, then trucks, demanded highways and as a result the complex motor carrier industry has emerged as the ubiquitous replacement in freight movement. Throughout these changes the right of shippers to combine shipments with other shippers to secure lower unit rates has remained strong. Our federal constitutional system established a dual, intrastate control pattern from a legal standpoint which has complicated transportation regulatory and service patterns. Most low traffic density areas are confronted with serious service problems which largely stem from lower volumes and hence somewhat higher unit costs. This inevitably leads to questions of effective cooperation in goods movements and shippers' associations as well as agricultural cooperative haulers, have ways to help each other in certain circumstances.

Part II

Freight Transportation Management and Control

During a 100-year period in our history after 1825, the rail era sprouted, bloomed and began to wither even though its advocates and much of the nation did not realize the full power of the competitive system of highways and motor vehicles which began to emerge after World War I.

By the time the depression of the 1930's struck, the nation had a rail system that was significantly overbuilt in relation to low density service lines and thus, almost all of the corporate systems were too highly involved and debt-ridden to carry themselves through a major depression era. At the same time, the United States had a highway network of significant proportions and a motor truck fleet which was effective at short distances and eager to grow. In addition, the nation had a truck productive capacity that was more than adequate, especially since the demand for passenger cars was to be curtailed somewhat at least by economic conditions.

In this era, the Interstate Commerce Commission which had been struggling for over 40 years to regulate the railroad giants was given the added task of controlling but also of promoting an infant long distance trucking industry.

Since the end of the decade of the 1930's, the nation has seen a revitalization of the waterways transport mode and the spectacular rise of the aviation industry. Airlines, though expensive, are taking over larger shares of high value express type freight.

Also, since the end of World War II the rapidly expanding motor carrier industry has divided into (1) for hire regulated carriers, (2) for hire unregulated (exempt) carriers and (3) private carriers, each with tremendous capabilities and each somewhat envious and irritated with each other but all united in their determination to keep expanding at the continued expense of the beleaguered rail industry.

Thus, the nation has tremendous transportation service capability provided by a group of competing transport modes, no one of which can control or dominate the other except through economic conflict or through governmental interference by way of regulation.

Regulations have emerged which control many aspects of the services performed by the various transport companies. The regulators have tried to build or maintain an equality of treatment for all shippers everywhere, working first with rail service, then motor carriers, airlines and waterways operators. A highly complex and burdensome system has emerged which has not provided the low cost service that many people have felt should be present. As a result, Congress in the past few years has altered the regulatory stance, first toward airlines and then in 1980 toward the motor carrier and the rail industries.

As a result, the nation is undergoing a reorientation and indeed a restructuring of its transport system especially as it relates to rail and highway service. Some issues have been settled, at least for now, but since the courts will inevitably be asked to arbitrate differences, many issues will be uncertain for many years. In the meantime, economic activity will continue and transportation service will remain an absolutely vital but somewhat hectic part of the American scene.

Patterns of Goods Movement

The Right to Coload

The concept of two or more shippers co-mingling shipments to a common destination in order to secure effective service at an acceptable cost probably is as old as commerce itself. The haulers of cargoes, whether private or for hire, always have been faced with the problem of unit movement, i.e., what a canoe or vessel could safely hold and transport; what a pack animal could carry; or how heavy a load a wagon could move. Today, transporters still face the questions of how much an airplane, truck, trailer, rail car or vessel can transport and how they can obtain adequate compensation to justify the cost of movement.

Shippers who frequently dispatch relatively bulky cargoes to limited locations usually have a few problems in completing loads of adequate size, and thus can cut down on cost of cargo loading and unloading as well as using advantageous sizes of carrying vehicles. Conversely, the shipper of smaller quantitities or smaller packages, on an intermittent basis, is continuously beset by high handling costs per pound or package and often is plagued by the problem of holding his freight until other loads are available to make the movement economically feasible.

In the United States, since colonial times, many shippers have routinely coloaded with other shippers. They have done this to obtain either earlier departure, or cargo protection, or vehicle safety, or lower costs of movement, or some combination of these factors. Over the history of this nation, this right of the individual small-scale shipper to coload with other shippers has been established and protected in common and statutory law, although profit-seeking companies providing consolidation-type for hire transportation service traditionally have wanted to hold most or all of this consolidation business for their own account. Wagoneers, railroaders and truckers all have sought to protect existing traffic and revenues by limiting consolidation efforts of small shippers or of small shipments to secure the benefits of bulk or large shipment rates.

Service Patterns for Low Density Non Main Line Areas

Interstate and Intrastate Carriers

Because our Federal governmental systems demands it, all shippers and carriers have had to live and work under both intrastate and interstate transportation regulations. As an aftermath of the Federal deregulation drive, state regulations are changing, often under direct demands of the new Federal legislation (see page 18). Most states, however, can and do establish terms for freight movement that occurs only within that state.

At the present time, many low traffic density areas theoretically have a relatively large number of motor common carriers that possess interstate operating authority to provide truck service to or from these areas. In a number of instances, however, some of these carriers do not actually provide anything except token or partial service in such areas.* Also, these carriers may be either regular route or irregular route carriers.

Regular route carriers operate over specified highway paths. They establish and generally adhere to their schedules for pick-up and delivery service with substantial regularity. They usually are authorized to handle a rather broad range of general merchandise freight and if they do not transport certain commodities, this is announced in advance of service. For smaller shippers generally and for service into and out of lower density areas, the regular route motor common carrier is the major viable transport possibility.

The irregular carriers generally have broader territorial rights, and they have authority that allows wide variations in their operations. They may transport specific commodities between points within a given area, or they may transport specific commodities from or to specified points in an area to points outside such areas.

Irregular carriers often are restricted by their operating authority to handling truckload shipments only. However, there are exceptions where certain carriers may be authorized to handle smaller shipments. Again, this type of service is infrequent and not regularly scheduled. Irregular carriers do not operate over fixed routes nor do they maintain any regular schedule, but usually operate only when and where traffic develops. In a number of instances the distinctions between regular route and irregular route carriers are of small degree. This has become more true since the passage of the Motor Carrier Act of 1980. As authorizations have broadened many of the former irregular route carriers are free to perform scheduled service. Thus, it often is a question of willingness to serve rather than authority.

Intrastate carriers have authority to make pickups and deliveries on shipments moving entirely within a given state. These carriers may also have interstate authority. They usually are regular route carriers but can have irregular route authority.

Often there are only a limited number of carriers with intrastate authority who serve low traffic density areas. Some of these are general commodity carriers and are given a specific description according to the rules of the individual states. Others have irregular route authority and often are restricted to such commodities as packing house products, meats, frozen foods and agricultural products.

There may be many intrastate operators who possess special authority, for limited movement of limited commodities, ranging from sand and gravel to lumber and other commodities. Other carriers may have somewhat general radial authority, usually for, say, fifty miles in any direction from a central point.

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*Motor carriers often posses authority to serve rather broad geographic areas but they may limit their activity in some section by relative absence, i.e., no solicitation, failure to file up-to-date tariffs with effective competitive rates or infrequent responses for service.

In some states, specific performance information about many of the less general class of intrastate carriers is not reported or is not available to the shipping public. Shippers in low density traffic areas of these states may find it difficult to ascertain just what types of service are available in a given area.

Carrier Service Patterns

Almost all of the features of interstate service in low density areas apply also in relation to intrastate service. For this reason, the service patterns may be considered jointly.

Although rail service in many low density areas has all but disappeared, all towns with any significant levels of retail, wholesale or industrial activity have some type of motor carrier service. However, the large number of carrier listings that often exists do not constitute a true picture of the quality or extent of service, particularly for less than truckload shipments.

Many of the carriers now serving low traffic density areas have placed individual carrier restrictions in their tariffs which absolve them of the responsibility of handling small shipments from or to many areas, or because of rate stops, their actual charges which prevail are quite high.* The effect these carrier restrictions have on economic activity in such areas is that shippers and receivers must utilize private equipment, or turn to an express "type" and usually higher cost service such as United Parcel Service, the Postal Service or intercity bus package services in order to handle their smaller shipments from or to the nearest carrier facilities. On occasion this may require pickup or delivery at carrier terminals many miles away.

In addition, the lack of individualized class rate bases for many points has had an adverse effect on general rates and charges now assessed by carriers since many smaller communities are blanketed into basic groupings with the nearest larger community serving as the base point. Specified rate bases for each city not presently designated would be extremely helpful from the community point of view but would add some cost and extra effort in tariff quotation for the carriers. This would require an evaluation of the trade-offs involved.

Where they do not now exist, current volume and shipping characteristics may make it practical for commodity rates to be established, by negotiations with proper carriers, on certain key commodities moving in or out of low density areas on class rates today. Also, any disparity between present intrastate rates versus the lower levels which may be found to exist in bordering states obviously creates higher charges and works to create competitive disadvantages for some regions. It would be helpful to these areas if an analysis could be made of intrastate rates that seem excessive, to determine whether they can be more closely aligned with other states.

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*Rate stops are individualized tariff changes which provide for charges to move a low-rated item but at a higher charge. Example: waste rags may be hauled but not as waste. The carrier will charge as if it were new cotton underwear, a higher value item and hence subject to a higher rate.

In meeting the needs of small shippers to low density areas, private carriage must be used where necessary but use of common carriers should be encouraged whenever practical. This would make feasible a more nearly maximum utilization of the carriers' equipment. Such utilization should help produce and maintain the lowest possible rate structures in these areas and should permit common carriers to provide more economical and complete service to more destination points. There is some evidence that the new Motor Carrier Act has caused a number of companies to rethink their use of private carriage and to make more use of common carriers. This should prove beneficial to low density areas if the shift becomes extensive.

Cooperative Goods Movement Patterns

Forwarders' and Shippers' Associations

A regulated freight forwarder and an unregulated shippers' association cannot be distinguished on the basis of their physical operations. Instead, the distinguishing features are found in the relationship between the organization and those with whom it deals.

The shippers' association is a membership operation, distinguished from other organizations by the agency relationship between the members and the group. The shippers' association is not an organization that sells a service to members; it is an agent of the members, and it acts solely on their behalf.

For summary purposes, there are four primary characteristics a shippers' association must possess to receive the exemption provided in Subchapter IV 49 U.S.C. 10562(3). First, the association must be under the control and direction of the association members. Second, the essential risks and burdens of the enterprise must be borne by the association. Third, the association must be operated for benefit of members only. Finally, the association must be operated on a nonprofit basis.

From the point of view of shippers and growers contemplating a shippers' association, the principle of member control is paramount. Brief exposure to Commission decisions and court cases suggests that the first step in the failure of a shippers' association to conform to exemption provisions is lack of true member control.

Thus, a shippers' association must be operated for the benefit of the members as described in the statute. Two requirements are tied up in this principle. Benefits must flow only to members, and benefits must be associated with transportation cost saving, not the profitable operation of a transportation system.

Requirements of a shippers' association are entirely compatible with the kind of organization commonly called a cooperative. In fact, one court has said, "A true shippers' association is a nonprofit cooperative; the members bear the burdens as well as share the benefits of its operations. They bear the expenses of the consolidation and distribution operation as well as sharing in any surplus monies that remain in the association's treasury at the end of the year." (Freight Consolidators Cooperative, Inc. vs. United States, 230 F. Supp. 692, S.D.N.Y. 1964).

In this country, the most significant use of the cooperative has been in agriculture. For one definition of a farmer's cooperative, see the footnote below.*

Organization Forms

If an association of shippers meets the statutory requirements, the technical form of organization is not restricted. The organizational structure, whether unincorporated organization or incorporated association, is open. A corporation normally insulates its individual shareholders from liability beyond their investment.

Setting up an organization to transport or arrange for transportation of goods in interestate commerce will require a knowledge of the specific needs which should be served as well as familiarity with the statutes which control such activity. No specific organizational actions should be taken without guidance by an attorney knowledgeable in this specialized area.

The statute which controls Public Law 95-473, Oct. 17, 1978, was passed to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as Subtitle IV of Title 49, United States Code, "Transportation." The comments which follow relate to that recodification.

Subchapter II, Interstate Commerce

Title 49, U.S.C. Section 19526(a)(5), lists a number of exemptions from Subchapter II requirements relating to certificates of public convenience and necessity for motor carriers and to other regulatory control of motor carriers. The law states: (5) The Interstate Commerce Commission does not have jurisdiction over (5) a motor vehicle controlled and operated by a cooperative association* or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides interstate transportation for compensation . . .

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States government, the transportation:

(i) shall be limited to transportation incidental to the primary transportation of the cooperative association or federation and necessary for its effective performance:

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*The Agricultural Marketing Act of 1949, as amended, (12 U.S.C. Section 1141j) reads as follows: the term cooperative association means any association in which farmers act together in processing, preparing for market, handling and/or marketing the farm products . . . provided . . . that such associations are operated for the mutual benefit of the members . . . and conform to one or both of the following requirements: first, that no member of the association is allowed more than one vote; second, that the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum, and third, that the association shall not deal in farm products, farm supplies, and farm business services with or for nonmenbers in an amount greater in value than the total amount of such business transacted by it with or for members . . .

(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(iii) shall be provided only after the cooperative association or federation notifies the Commission of its intent to provide the transportation; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the the cooperative association or federation and its members during that fiscal year . . .

Subchapter IV, Interstate Commerce Act

Subchapter IV of the Interstate Commerce Act deals with freight forwarders, and through its exemptions, with other groups which are important to this discussion.

Section 10102 relates to definitions. Freight forwarders have been defined in the Act to mean any person (8) . . . holding itself out to the general public (other than as an express, pipeline, rail sleeping car, motor or water carrier), to provide transportation of property for compensation and in the ordinary course of its business --

(A) assembles and consolidates, or provides for assembling and consolidating shipments and performs or provides for break-bulk and distribution operations of the shipments:

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to the jurisdiction of the Interstate Commerce Commission under Subchapters I, II or III of Chapter 105 of this title.

Exemptions to Subchapter IV

As stated, Subchapter IV exempts several important groups from the regulations. One is an agricultural cooperative as defined above. Other Subchapter IV exempt actions are not restricted to farmer cooperatives and are available for use by shippers' associations or shippers' agents. These exemptions cover:

Shippers' Associations	(3)	the service of a shipper or a group of shippers in consolidating or distributing freight on a nonprofit basis . . . or
Agents	(4)	the service of an agent of a shipper in consolidating or distributing pool cars when the service is provided for the shipper only in a terminal area in which the service is performed.

Three Available Agricultural Patterns

Agricultural producers who want to move their products in interstate commerce may find three patterns of shipment available to them which provide transportation service that is exempt from economic regulation. First is the agricultural cooperative exemption in Part II of the Interstate Commerce Act. Second and third are exemptions from regulations as freight forwarders (and, thus, shippers' associations) in Part IV of the same Act. A properly organized and operated agricultural cooperative can make use of any of these three exemptions, with the choice depending on the needs of the shipping group and the advantages or disadvantages of each exemption pattern.

Subsection (3) above especially seems to fit the needs of the grower-shipper group. Also, a group of shippers under this pattern can be flexible enough in accepting new members to allow almost any type of shipper to join such an association.

Once the operating and economic requirements of the selected system have been worked out, shippers and growers can design an organization most likely to meet their goals. The many decisions on incorporation, taxation, etc. will have to be made on the basis of needs and permissible bounds of operation.

Further Information

NOTE: A more detailed presentation of the legal and operational issues discussed here may be found on pp. 83-96, "Shipping Alternatives for Moving Florida Produce to Eastern and Midwestern Markets." U.S. Department of Agriculture Office of Transportation, Marketing Research Report Number 1122.

PART III - THE POTENTIAL IMPACT OF RECENT FEDERAL LEGISLATION ON SHIPPERS' ASSOCIATION ACTIVITY

Recent legislative changes have made abandonment of non-profitable lines a reality. This has brought to the fore many considerations by economic areas, states and specific shippers to keep some rail service in areas affected by abandonment plans. The Staggers Act also in part added pressure on state regulatory patterns to conform to new federal guidelines or to be supplemented by federal requirements.

The Motor Carrier Act of 1980 has had a different result. The Act gave motor carriers the ability to operate in newer areas, permission to transport a wider variety of freight and newer ways to organize to serve shippers. This has opened up vast new possibilities to alter service patterns, but the Act also allows for-hire carriers the right to reduce service levels in areas not considered profitable. All of these changes put added pressure on transportation managers to try to seek new effective patterns to move their goods. Shippers' associations should be able to benefit to a substantial degree if their knowledge is sufficient to capitalize on these new circumstances.

Part III

The Potential Impact of Recent Federal Legislation on Shippers' Association Activity

Impact of the Staggers Rail Act of 1980 on Shippers' Association Activity

The Staggers Rail Act of 1980 is having perhaps a broader impact on service patterns than the Motor Carrier Act. The situation relating to testing and interpretation of the Staggers Act is at least as troublesome and the economic repercussions may be greater. Because of this, rail service patterns to shippers' associations are not totally clear but the main facets of the Act are stated below.

The Staggers Rail Act of 1980 clearly established congressional intent to provide " . . . the opportunity for railroads to obtain adequate earnings to restore, maintain and improve their physical facilities while achieving the financial stability of the national rail system." For the purpose of this study, several sections of the Act are significant.

New Railroad Line

Entry of new lines is now almost unlimited if and when a rail company deems it financial worthwhile to expand trackage. To assist in this, other railroads are now required to freely allow the new line to cross existing trackage. The right of eminent domain to secure other rights of way remains in effect.

These provisions, of course, offer little potential to low density sectors, except that once in place, the rail line can and will presumably offer all service which is considered remunerative. Thus, piggyback or supplemental bulk movement to and from intermediate points may become available between points such as new coal fields and urban markets.

Abandonment

Abandonment is a more significant prospect than entry for most low density areas. The Interstate Commerce Commission still has to approve abandonments if lines are involved in interstate commerce, but if no opposition to the abandonment is filed with the Commission, the action to abandon must be allowed within 75 days. When there is a contested situation, the full procedure, including opposition statements and the total time for Commission review, can take no more than 255 days. The basic consideration for abandonment is unprofitability and the railroad no longer has to be actually losing money on the line.

Subsidization

Parties interested in retaining rail service which the carrier seeks to abandon have two avenues to pursue. States, local governments and/or shippers, jointly may pool their resources and offer to subsidize a specific segment of line set for abandonment. The offer has to be made quickly and it has to be significant enough to cover rail costs as well as a reasonable return on the carriers' investment in that line.

The I.C.C. can act as binding arbitrator if there is no agreement between the subsidy offer and the carrier, but if the arbitration decision is adverse to the shipper petitioners, they may withdraw from the proceedings and allow the abandonment to proceed.

Line Purchase	Alternatively, some interested party with adequate financial strength can offer to buy a line from a carrier. The railroad cannot refuse such an offer (for marginal lines) if the line has been proposed for eventual abandonment or if the railroad is giving inadequate service and refused to upgrade the service after the I.C.C. has allowed a reasonable time for the carrier to act. Buyers who acquire rail segments may request that the I.C.C. prescribe minimum joint rates and divisions of revenues for the line in question. Also, the selling railroad will be required to grant necessary trackage rights to allow adequate interchange of traffic.
	Thus, areas with a genuine need or an interest in rail service are provided avenues to pursue in maintaining rail service. The Staggers Act is absolute in its intent to allow the railroads to free themselves from ownership and/or operation of trackage which is deemed to be a drain on the general main line services offered by the rail company.
Rate Increases	To further support this position, the Staggers Act has provisions to allow upward movement of almost all rail rates in keeping with inflationary pressures. This movement to allow rates to move upward is pervasive and the intent of the Act seemingly is to require that competitive market forces, i.e., other shipping alternatives, will set the limit to increases in rail rates.
	The only effective regulatory limit to rail rate increases seems to turn on the issue of market dominance, i.e., monopoly conditions. Small shippers or low density areas are not likely to be able to contest effectively on these grounds so the complex formulas which would establish such circumstances are of little importance here.
Non-Compensatory Rates	Some effort to prevent non-compensatory (unreasonably low) rates is possible under the Act but again the burden of proof is upon the contestant to show that such actions drop below the carriers' variable (out of pocket) costs. A mere showing of potential damage to one shipper or one shipping area will not stop the rate change.
Rate Discrimination	The Staggers Act specifically repealed the "Fourth Section" rule as it relates to rail-water competition. Thus, a railroad is no longer obligated to hold down a rate established to meet water competition. The other provisions of Section 10726 (The Long and Short Haul Section -- formerly the Fourth Section) remain in the act but the I.C.C. has authority to waive their provisions and shows strong intentions to do so in most cases. Thus, discriminatory rates can be challenged but the Act specifies that differing rates via differing routes may no longer be considered as producing discriminatory rates per se. Thus, the former argument that a rate created "undue preference and prejudice" is no longer a viable argument.
Released Rates	The Staggers Act allows the railroads greater freedom in publishing released rates . . . rates based on limiting the carriers' liability for loss or damage. Shippers must be given a choice

of rates but the rate, which given full value protection, may be so high that almost no shippers would choose to utilize it.

Joint Rates

Joint rates for shipments over two or more rail lines remain in the purview of the I.C.C. Since joint rates often arouse controversy about divisions between carriers, the Staggers Act allows carriers to cancel joint rates when their divisions are grossly unfair and inadequate (as demonstrated to the I.C.C.). In lieu of cancellation, a given carrier can establish special surcharges on this traffic. If a carrier elects to use surcharges on one joint rate, it must apply the same treatment in relation to other routes it serves between the same points. This would apply to single line service as well as joint line service. Shippers can contest the provisions of these cancellations or surcharges only when they can show no effective alternative to the service involved in these actions.

Tariffs

Tariffs are still published but with effective dates reduced to shorter periods -- increases now require 20 days notice and decreases become effective in 10 days. Rate Bureaus may publish tariffs as a service but the Act seems to have the intent of doing away with almost all collective consideration of single line ratemaking by railroads. The sweeping provisions against collective action in rail ratemaking take full effect in 1984 but are being felt throughout the industry. The Interstate Commerce Commission has dropped the requirement that the railroads provide a joint class rate structure. There need not be joint class rates and if collective action by carriers is to be ended, the uniform classification structure, which must be in place if joint class rates are to be in effect, seems headed for extinction.

Reduced Rail Service

It is clear from these comments that Congress has demanded that the Interstate Commerce Commission and the nation generally cease to view the nation's rail system as a total, general purpose transportation network, aimed to provide like service under like circumstances to all sectors of the nation. Shippers fortunate enough to be on the network which will remain after "adjustment" may expect some levels of service but only those elements which will provide adequate revenue to help support this rail network. Because of the changes already made and the uncertainties which exist as to future events, the low density area or low level shipper must be alert to these and other adjustments in rail services.

State Regulation of Intrastate Rail Service

In keeping with the changes made in interstate regulation, the Staggers Act stipulated that state regulation of intrastate rail service must conform to the interstate system and that states must change their laws which would be in conflict with these objectives. The state agencies with rail supervision had to file notice of adjustments with the I.C.C. or state rail regulation would be ended.

Under these conditions it was expected that the I.C.C. would assume intrastate regulatory authority. Under this proviso, a series of interchanges have taken place between the I.C.C. and the various state regulatory bodies. On May 11, 1982 the

Commission Secretary issued a statement (Ex Parte no. 388) listing six states, California, Connecticut, Delaware, Mississippi, Nevada and North Carolina which had formally requested that the I.C.C. exercise jurisdiction in their states and the order directed interested parties to file applicable intrastate tariffs with the Commission. Eight other states and the District of Columbia had not established certification of their programs and hence technically had lost authority to regulate intrastate rates. The Commission listed these as Alaska, Arizona, Hawaii, Maine, Massachusetts, Rhode Island and Vermont. South Dakota specifically asked the Commission not to assume jurisdiction. As of June 1, 1982, the Commission maintained a position that it would not actively assume intrastate rail regulation in these states which had laws still at variance with the Staggers Act.

Impact of the Motor Carrier Act of 1980 on Shippers' Association Activity

The Motor Carrier Act of 1980, signed into law on July 1, 1980, is widely heralded as the trucking deregulation act. The sweep of the act is wide, and some deregulation is provided along with many new and yet untested provisions. For these reasons, it is not entirely feasible to state categorically what the act will mean in formation and operation of shippers' associations. Because of its importance, however, an effort has been made to highlight the provisions that are most likely to impact on shippers' associations.

Entry Requirements

The Act retains the requirement that anyone wanting to get into the interstate trucking business first obtain authority to do so from the I.C.C., in the form of a certificate (for common carriage) or a permit (for contract carriage). However, the older requirement that the proposed service be "required by the public convenience and necessity" has been dropped and replaced by wording which calls for serving "a useful public purpose." Also in some instances not even this is required.*

In six narrow segments of trucking operations the applicant truck company need only prove that it is "fit, willing and able" to provide the proposed service. An application for authority implies "willingness" and "ability" usually is assumed until proven otherwise by poor performance. The controlling standard of fitness usually is evidenced by past safety records or the absence of any protests to the request.

The "fitness only" segments are:

- Where no truck service now exists.
- Where rail service has recently been abandoned.
- Transportation service for agencies of the Federal Government.

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*The Interstate Commerce Commission is interested in full compliance with regulatory standards. Any evidence from a protestant which shows false statements in an application, or flawed character or a poor safety record will be cause for rejection.

- Express-type service -- transportation of shipments weighing 100 lbs., or less, provided the vehicle contains no shipments weighing more than 100 lbs.
- Owner-operator transportation of processed foods, but only if (a) the owner-operator is also engaged in hauling exempt agricultural produce; (b) its processed foods transportation doesn't amount to more than half its business; and (c) the owner-operator is behind the wheel (except in emergency situations). The idea is to give owner-operators the opportunity for backhaul traffic on their agricultural-produce runs.
- Motor carrier brokerage -- that is, arranging for (but not physically providing) regulated truck service.

Protests against these applications are permitted only where the protestant contends the applicant is not "fit" to hold the operating authority it's seeking. The I.C.C. is required by law to issue that operating authority unless the evidence shows that the applicant is unfit to serve.

Common Carrier Certificates

A trucker desiring to provide general commodity common carrier service must prove not only that it is "fit" but also that its proposed service would serve a "useful public purpose."

Prior to July, 1980, the applicant was required to submit affirmative proof that its proposed operations would meet some need not already being adequately filled by existing carriers. During the late 1970's, a deregulation-minded I.C.C. softened this requirement substantially but it remained, until enactment of the statute, the legal standard by which such applications were to be judged.

Under the "useful public purpose" standard, the trucker making application must only show that there is some public need for or interest in its proposed operations -- whether or not other carriers are also available to fill that need or interest. The potential diversion of traffic from existing carriers is not now an issue unless it is demonstrated by protestants that such diversion would be harmful to the public.

The simplest way prospective entrants into regulated common carriage can meet this test is to find shippers who are willing to express an interest in their services. A shipper does not have to state dissatisfaction with its existing service; even if that service is known to be good, the shipper is free to express a desire for other competitive services and the law requires the Commission to give heed to that support.

The Commission must review two key factors in any support statements by shippers -- the type of commodities for which the shipper indicates a transportation need, and the geographic area in which its service needs exist. These must coincide generally with the scope of the applicant's proposed operations.

In some cases, the Commissions may feel that it is suitable to recognize other types of evidence, such as broad data concerning need for motor carrier service in a community or area or greater energy-efficiency of the proposed operations.

Contract Carrier Permits

A contract-carrier applicant need prove only that its proposed operation would be "consistent with the public interest"; the former administrative standards developed by the commission have been relaxed in a number of ways.

The first change eliminates requirements that contract carriers be limited as to the number of shippers they can serve. The old "rule of eight" developed by the I.C.C. which limited contract carriers to not serve more than eight contracting shippers at any given time was formally eliminated.

The Act also bars the Commission from requiring a contract carrier to "limit its operations to carriage for a particular industry or within a particular geographic area." Under the new law the commission has generally found that contract carriers would be authorized to perform transportation "between points in the United States." An additional change in the control of contract-carriage applications was a specific reduction in the statutory requirement that the Commission consider the effect of granting the permit on any protesting carriers. Weight is to be given to that effect now only if granting the permit "would endanger or impair their (protesting carriers') operations to an extent contrary to the public interest."

The Act also formally removed the I.C.C. prohibition against operating as both a common and contract carrier. "Dual operations" by truckers (holding both types of authority) historically had been frowned upon by the Commission but in 1978 this position of the Commission was reversed and Section 10 of the Act strengthened this new stand by the I.C.C. A major effect of this is to give common motor carriers roughly the same contractual freedom which railroads have under the Staggers Act. Members of the Commission staff have pointed out that dual authority by truckers is becoming extensive. The number of motor carriers with dual authority is known to be more than 1,500, and it is believed the number is substantially higher.

Operating Rights Restrictions

As well as loosening standards for entry into the regulated trucking business, the Act provides for broader grants of operating rights to let I.C.C. authorized truckers provide a wider range of service.

The Act directs the Commission to "reasonably broaden" commodity descriptions in certificates and permits which spell out what goods the carrier may haul.

The Act also calls for broader interpretations relating to territorial descriptions which set out the geographic points, areas, etc., that carriers may serve. The Commission stated that the smallest territorial unit it will consider is a county or city, and most applications filed under the Act during the first year covered wider territories than that.

In addition, the Act required that the Commission stop imposing restrictions against service at intermediate points along truckers' authorized routes and to end its practice of granting one-way operating rights. It also directed the Commission to review other types of operating rights restrictions -- limiting service to particular plant sites, particular types of equipment, etc.

In handling these matters, the Commission has invited carriers holding operating rights with more limited commodity or territorial descriptions than those now acceptable, or subject to difficult restrictions, to ask the Commission to make the necessary changes in their certificates or permits. Such requests are not subject to any protests.

The Common Carrier Obligation

The scope of motor carrier operating rights has been so broadened by the provisions of the act that the I.C.C. has expressed concern about the traditional "common carrier obligation." This standard which, through common law as well as by statute, has required that all common carriers make their services available to the public at large and provide service to all comers without favor or discrimination is now under consideration for possible revision by the Commission.

The common carrier obligation was left in the law by the Motor Carrier Act but more than a year after the Act became law, the Commission was still wrestling with this knotty problem. The increased motor carrier competition encouraged by the Act's relaxed entry provisions should help alter the situation; it is less important to enforce the common carrier obligation if the shipper has ample alternative service available. Nevertheless, it is often argued in the shipping community that the common carrier obligation is all that has kept reasonable trucking service available to some shippers of certain types of traffic. For example "difficult" cargo usually considered undesirable by the motor carrier industry -- furniture and other items with unusually high fragility or low density, or goods moving from and/or to small communities in remote areas. It seems likely that some need for continued enforcement of this standard will continue to exist. This will necessitate that some basis on which it can be enforced must be determined by the Commission.

Rate Levels

Congress incorporated into the Act provisions which allow motor carriers a very considerable amount of ratemaking freedom.

Zone of Reasonableness

A chief provision designed to enhance the truckers' ratemaking freedom was the creation of a so-called "zone of reasonableness" within which rate increases or decreases may not be challenged as being unreasonable. The concept is similar to that found in the Staggers Act's zone of freedom for railroads, but the motor carrier zone is broader and confers regulatory immunity relating to reasonableness of both increases and decreases.

In any one year, a motor carrier may either raise or lower any rate by up to 10% within the zone of reasonableness. In addition, the Commission is authorized at its discretion to add an extra five percentage points onto the zone's limits in any year.

This provides very significant ratemaking freedom for the carriers whose principal limitation now is that they must notify the Commission of their desire to have rate proposals considered under the zone; otherwise they are treated normally, and remain subject to I.C.C. jurisdiction on grounds of reasonableness.

Commission staff members have stated that the zone of reasonableness provision has hardly been used as of May 1982. Carriers have chosen, instead, to take independent rate actions even though these actions are subject to I.C.C. review and possible suspension. To invoke zone of reasonableness provisions, the carrier must state that it is opting for such rate action pursuant to the provision of the Act and hasn't discussed it with other carriers under the antitrust immunity.

Rate Discrimination

The zone of reasonableness applies only to allegations that a particular rate is unreasonable; it does not protect carriers from complaints that their rates may be discriminatory. Such cases must be heard on their merits as before.

Released Rates

The Motor Carrier Act eliminates the older requirement that carriers obtain I.C.C. permission before publishing released rates limiting their loss-and-damage liability. Carriers may now publish such rates freely, but only on an individual-line basis; that is, rate bureaus may not participate in such rate discussions.

The I.C.C. has not required that shippers be offered a "choice of rates" (i.e., a lower released rate and a higher full-liability rate.) This is considered by the motor carriers as a long-standing interpretation of the common law, however, and is assumed to be controlled by knowledgeable shippers and motor carriers.

Joint Rates

Under the Act, the I.C.C. was given authority to compel truckers to enter into joint rates and through routes with one another and with carriers of other modes--authority the Commission had long sought. Heretofore regulated motor common carriers had been permitted to enter into such interline arrangements entirely at their discretion; the I.C.C. could not command them, as it could (and can) the railroads. Partly out of concern that service to small communities might suffer under deregulatory provisions of the Motor Carrier Act, Congress finally gave the Commission the authority to require motor carriers, too, to set up interline arrangements if they did not do so voluntarily.

After the passage of the Act, the Commission announced its intention not to make use of that new authority--it also discarded its existing rule that motor carriers seek permission before cancelling any joint rates and through routes they now have. Under the new standard, shippers may protest such cancellations only if they have no alternative service available -- and even then the Commission will delay the cancellation for only as long as it takes to set up "reasonable" alternatives.

Rate Bureaus

Under the Act, rate bureaus may not --

*Vote on single line rates. Until 1984, however, discussions of single-line rates are permissible in bureau meetings.

*Allow their own employees to take any initiative in connection with ratemaking. Carriers remain free, however, to call on bureau employees' expertise in such areas as costing to guide them in their own ratemaking activities.

Interfere in any way with carriers' independent-action ratemaking. This extends even to discussions of independent action rates; if the carrier does not elect to docket its proposal with the bureau for group action, it may not be discussed under bureau auspices.

*Docket carriers' independent-action rate proposals, unless the proponent carrier wants them docketed. Under I.C.C. rules carriers have full control over the docketing process. They may elect not to have independent-action proposals docketed at all; or, if they do choose bureau docketing, they may prescribe when any given proposal should be docketed (in advance, at the time of tariff publication, or at some other time of the carrier's choosing.)

*Protest proposed rates before the I.C.C.

But bureaus may --

*Discuss and vote on general increases and other "broad tariff changes." The Commission has required that any such discussions be confined to average (not specific carrier-by carrier) costs; and that shippers be afforded an opportunity to present their views if they want to do so.

*Establish commodity classifications. In May 1981 the I.C.C. called for extensive revision of the National Motor Freight Classification which for forty years has been a vital part of the motor carrier pricing mechanism, just as the older rail classification served for many many years, principally on LCL freight.

The carrier industry almost universally and shippers' groups generally have voiced opposition to the tentative changes

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*To docket a proposal is to place it upon the Bureau's agenda for consideration or other action.

advanced by the Commission. One of the most significant changes would cut the list of characteristics to be considered in establishing a class from fifteen down to four, density of the article, stowability, ease or difficulty of handling, and liability.

On March 9, 1983 the Interstate Commerce Commission acted decisively on the matter of the class rate system. The National Classification Committee was told that the national motor freight classification must limit its criteria to the four items previously set forth: density, stowability, ease in handling and liability and that the changes set forth must become effective by April 25 except for the development of a single classification for TL and LTL ratings which received a September 6 deadline for action.

*Provide all logistical-support services such as tariff publication, cost analysis, etc., for their members.

The I.C.C. fixed 30% of a bureau's or bureau committee's membership as the minimum quorum for any meeting. Meetings must be open to the public.

Finally, bureaus must dispose of all docketed proposals within 120 days. If they take longer, they may be obliged to justify the delay to the I.C.C.

The Commission possesses several enforcement options if it finds any bureau violating either the law or its regulations. It may reject any tariff publications involved or strike them if the violations aren't discovered until after the tariffs become effective. It may (in the case of minor violations) suspend and investigate, rather than reject, the tariff(s). It may reexamine its approval of the bureau's agreement, which is a prerequisite before the bureau is entitled to the antitrust immunity conferred by the law. Or it may refer violations to the Justice Department for possible antitrust prosecution.

Insurance

Congress elected to build into the act significant insurance requirements to keep the truckers operating safely. The Act requires the Department of Transportation to fix minimum accident-liability insurance standards for all commercial truckers. As of July 1, 1981, these were set for $500,000 for personal injury or property damage for most carriers, and $1 million for carriers hauling certain especially dangerous cargoes (explosives, radioactives, poison gases and compressed gases whether poisonous or not).

As of July 1, 1983, these minimums were to have been increased under the law. The standard insurance requirement was to be $750,000 per accident; carriers engaged in hauling any goods defined as hazardous by the DOT must have had at least $1 million worth of insurance; and the minimum for carriers of the especially hazardous goods noted above must have been $50 million in coverage.*

Congress evidently decided that such high insurance levels would encourage truckers to operate safely by confronting them with the prospect of high, even prohibitive, insurance premiums if they operated unsafely.

Regulated truckers are also required, as in the past, to buy insurance on the cargoes they haul -- a minimum of $5,000 per truckload and $10,000 per loss-and-damage incident. The Commission considered raising these minimums during the spring of 1981, but decided not to make any changes at that time.

The Commission's Shift in Emphasis to Shipper Protection

The total regulation concept which the Motor Carrier Act of 1980 effectively laid to rest has hastened the Commission's move away from protecting the interests of existing carriers to a pattern of helping to see that shippers get the best service possible. This should provide a much healthier climate for bona fide shippers' associations in their day-to-day activities. The recent action by the Commission (May 15, 1981) which allows some degree of solicitation and advertising by associations is a case in point. (See p. 68).

Other adjustments which indicate the change in emphasis of the Commission have taken place in the staff functions of the I.C.C. After passage of the Act, the Commission altered the name of the former Bureau of Compliance to the Office of Consumer Protection. Under the leadership of Chairman Taylor, this name (in 1982) was altered again to the Office of Compliance and Consumer Assistance to "better identify the broad functions performed by this segment of the Commission's staff."

Possible Impacts on Shippers' Associations and Low Density Service Areas

Under the old Act, entry of new carriers had become significantly restrictive if not too difficult. This actually was one of the major contentions of the advocates for "deregulation," and the Interstate Commerce Commission as constituted prior to passage of the Act of 1980 had been moving by interpretation to accelerate entry of new carriers or expansion of service territories. Many intelligent observers of the industry feel that the motor carrier industry withdrew its adamant opposition to a new law in order to rein in the Commission by setting new service guidelines which could not be ignored.

For whatever reasons, Congress did significantly alter patterns for entry into trucking for both common and contract carriers. The new law provides that new service applicants must serve "a useful public purpose" and in practice, if shippers will come forward to request the new service, this generally is deemed sufficient evidence to support the application. Also, only

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*The Federal Highway Administration, in the June 28, 1983 issue of the Federal Register, announced a one year delay in these amounts - "pending further study."

those carriers who may be directly affected by the entry can offer any opposing testimony.

In addition to allowing easier entry, the Act has made it feasible for existing carriers to expand their operating territories and to significantly enlarge upon the commodity lists which they had been allowed to carry.

It is too early to see fully what these changes will mean to shippers in low density situations. It is clear that a significant increase in service patterns has taken place. Well-informed observers state that 5,000 new lines and 50,000 expanded certificates/permits have been issued or authorized in recent years.* This has created new opportunities and responsibilities both for existing long-haul carriers and for many new shorter-haul companies. The period of change, coupled with the continued existence of economic slowdown has put great pressure on many carriers, but no definite pattern of service adjustment has developed to this time.

Wider Operating Freedom

Major carriers seeking long-line, single-haul patterns will be able to accomplish their desire to get the "long haul" and to add new commodities formerly denied to some carriers. These changes will strengthen the more efficient carriers, but weaker or poorly managed carriers could decline perhaps to the point of collapse. If a nation-wide complement of strong, small companies serving limited areas emerges over time, this may make assembly and distribution activities easier in some areas, as these new carriers look for traffic to sustain them. There is also a much greater possibility that a shippers' association could support a request for new authority for a cooperating carrier if no viable service is available otherwise.

The entry of new, shorter-haul carriers eventually may make it easier for long-line carriers to "deal off" some territories and some localities. If short-haul carriers who remain in an area can perform adequately and at no higher total cost, this will constitute a plus for low density service, but if the new joint rates (which these changes would demand) create higher total charges, the low density areas will suffer. Such a situation could augment pressure for cooperative action to hold rates down. Under such circumstances, it might be feasible for some shippers' associations to obtain their own operating authority if no viable service was available.

Rate Freedom

The removal of single-line ratemaking from control through action by the Standing Rate Committees of the various rate bureaus will encourage individual rate changes which will in turn add to the need for a qualified traffic manager who can estimate cost patterns as well as to keep up with rate changes and who can effectively seek to match freight movements in such a way that service is maintained at the lowest commensurate cost.

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*The Private Carrier, September 1982, p. 8.

The ability of carriers to change rates on an individual basis as well as within a "zone of reasonableness" may alter the existing patterns of long term, relative rigidity of rates.

It is evident, currently, that some larger shippers are able to negotiate some rate changes individually. This would seem to add to pressure on the carriers not to reduce rates as much for their small shipments or their low density service. If some weaker carriers (in an effort to survive) offer lower rates without the ability to cut costs elsewhere, the accompanying revenue losses may cause them to collapse, creating a void or partial monopoly in some service areas. It seems evident that cooperative action through shippers' association formation could be the best community defense in some of these situations.

Territorial Designations

The Commission's implementation of entry and rate freedom provisions usually stipulates that new authority when granted will be at least country-wide, rather than single point. Carriers then will be authorized to serve all of the contiguous county rather than, for example, the steel mills at Gary, Indiana.

This provision may be interpreted later in such a way that the problem of "commercial zone" designations will diminish or be eliminated in favor of countywide designations for terminal areas. Although this could create problems for carriers, this would greatly assist the movement of low density traffic to points within a county but outside an existing commercial zone.

Shippers' Association Use of Contract Carriers

The Act specifically allows freight forwarders and hence by analogy shippers' associations to enter into contracts with contract carriers. It also deleted the older requirement that truckload movements, either common or contract, of more than 450 miles be handled at not less than the regulated, i.e., Rate Bureau, rates approved by the I.C.C.

These changes allow contract haulers to carry shippers' association traffic which is providing flexibility and some lower long distance cost patterns to associations. If common carriers decide to "bid" on this traffic, shippers' associations who can load carefully may see significant savings emerge from these changes.

Pooling

Under the old law, pooling and other forms of combination of operations were prohibited unless the I.C.C. specifically approved "in the interest of better service" or of economy of operation and found that such actions did not unduly restrain competition. The new Act says "any motor common carrier . . . may apply to the Commission for approval of an agreement or combination with another motor common carrier of property to pool or divide traffic or any services or any of their earnings . . ." If the I.C.C. determines that the agreement does not imply unduly restrained competition, the Commission shall, without a hearing, approve the agreement. Where some element of competitive restraint is found, the Commission must hold a hearing and then approve under specified limitations.

This provision is anti-competitive on its face but undoubtedly was included in an effort to help sustain some elements of common carrier service in low traffic density areas.

<u>Small Community Service Study</u>

The Act of 1980 stipulated that the I.C.C. must submit to the President and to the Congress by September 1, 1982, a report on motor trucking service to small communities. The Act said:

> The report shall include an analysis of the common carrier obligations to provide service to small community shippers and an assessment of whether the Commission is enforcing such obligation. . . The report shall also describe the extent to which motor carriers were providing service to small communities prior to the date of enactment of this Act, and evaluate the effect of this Act on such service. The report shall include specific recommendations regarding ways to ensure the provision and maintenance of motor carrier service to small communities.

This study was demanded in order that Congress could enact further remedial legislation to assist the maintenance of service to small communities if the effects of the Act of 1980 were injurious. The study was submitted at the stipulated time after extensive study of availability of service, service quality and rates to and from small communities. The conclusion of the report said (p. 4) "These results can lead to only one conclusion. The Motor Carrier Act of 1980 has not harmed shippers in small and isolated communities." The future may tell a different story but for now both shippers and carriers agree with these findings.

PART IV - DEVELOPMENT OF THE ASSOCIATION MOVEMENT

The right to coload, mentioned earlier, is the key to the growth of shippers' associations. These groups act in much the same way as for profit freight forwarders but the not for profit pattern makes the two types legally very different. Shippers' associations which operate within the framework developed by custom and court decisions are excluded from regulation by government. Associations now can advertise their existence and service patterns so long as they remain a true membership controlled activity. Since associations are not regulated, no composite reporting of activities is feasible. Knowledge of activities of the movement must come from "personal" contact in one form or another. Two trade associations exist which can be contacted for some information.

Part IV

Development of the Association Movement

Nonprofit Shippers' Associations

A shippers' association is a nonprofit organization composed of a group of shippers/receivers of freight who have a common interest in shipping services and geographic affinity. The organization may perform many services, but its principal activities are twofold. First, it will consolidate their members' shipments into larger lots in order to take advantage of quantity discounts and other savings offered by rail and motor carriers. Second, it will try to obtain faster or better service by offering better scheduling or handling for small shipments. Terms of sales, either F.O.B. origin or destination, are not an issue in operations of bona fide nonprofit associations.

Functions

An association accomplishes its principal goal by coloading or assembling the several smaller shipments of its members into trailerload, carload or other volume shipments. The importance of the concept of coloading becomes particularly clear as it aids the small shipper. Shippers of large cargos usually have few problems in accumulating loads of adequate size, but the shippers of smaller quantities on an interim basis are continuously beset by high cost per pound or package. In addition, they often are required to pay surcharges to expedite service or face the problem of holding freight until other tonnage is available. A shippers' association uses the coloading process to overcome these problems. Shippers' associations may contract with warehouseman, shippers' agents or consolidators to perform specific services which its members need to have performed. Two or more shippers' associations may coload freight if each meets the nonprofit criteria of bona fide associations as described above.

Revenue

Revenue for startup operations usually is generated through membership fees. These fees differ in size depending upon the scale of operation. They may be small enough to cover only the paperwork costs of the association or be sufficient to help keep a management staff, obtain insurance and keep a "safety" fund for emergencies. Other revenue for association work is derived through service fees for handling actual shipments. Some percentage of the savings engendered from consolidation of shipments is kept as association revenue.

Management

Management of a shippers' association is controlled by its members who are participants, not stockholders. The membership through a governing body, sets association policies. In all but very small associations, Board of Directors are chosen to oversee the interests of its members, and the Board should meet often enough to ensure that it makes or approves of all major decisions. Associations hire managers as well as other operational staff, but the Board must have authority to dismiss the entire management team if it should become necessary.

A more complete discussion of the legal attributes of an association will be found in the section on legality which follows.

Distinction from Freight Forwarders

To understand the legal and economic position of shippers' associations, it is important to compare the role of their closest counterparts, the regulated surface freight forwarders. Freight forwarders perform virtually in the same pattern as shippers' associations (i.e. they consolidate shipments into larger lots for line-haul movement by rail or motor common carrier). However, they are profit-making firms and as such, over time, they have tended more and more to serve only larger shippers. Forwarders are regulated (Part IV of the Interstate Commerce Act, also known as the Freight Forwarder Act) in much the same fashion as common motor carriers. Entry is controlled by the Interstate Commerce Commission and prices may be set in rate bureaus, etc. - - even though the industry generally appears to be highly competitive.

In any event, the shippers' associations freight forwarders, some "distribution" centers and some transportation brokers as well as a few regular route motor carriers provide a number of the same fundamental services and may "compete" for some of the same freight under certain conditions.

An important difference between freight forwarders and some shippers' associations is in the pickup and delivery service performed. In the operation of freight forwarders, pickup and delivery generally is provided for in tariff provisions and this is performed in vehicles owned or leased and operated by the freight forwarder. In contrast, the shippers' association usually contracts for pickup and delivery service, generally employing a local trucking company or drayman, who in turn charges the association for services performed.

In both cases, a single through freight bill is issued to the shipper or consignee. Freight forwarders usually operate their own terminals and though shippers' associations often do not own or operate any vehicles or terminal facilities there are some which, in recent years, have acquired association owned terminals in key cities. In cases where an association owns a terminal facility or operates vehicles on either a leased or owned basis, the costs are incorporated into the pricing structure of the association and charged back to the member users.

The ultimate distinction between these two important freight "handlers" is the presence or absence of the profit motive in their freight operation.

The Legal Status of Shippers' Cooperative Associations

As stated earlier there has never been a time when the federal courts have refused to support the principle of shippers co-loading freight in order to secure better service or lower rates. In the period prior to 1920 the Interstate Commerce Commission generally took the same position.

Evolution of Status*

With the rise of the motor carrier industry the position of the Commission seemed to change. When the Motor Carrier Act of 1936 became law the Commission shifted away from full support for the shippers' association concept and by the time the freight forwarders were brought under the Interstate Commerce Act in 1942, the Commission's general position seemed to be to view most shippers' associations as almost synonomous with freight forwarders and thus subject of full Commission review.

In 1947, Division 4 of the Interstate Commerce Commission ruled that an otherwise legal shippers' association could not handle goods shipped from nonmembers to members of an association on an F.O.B. destination or delivered to price basis (269 I.C.C. 504, 1947), because the Commission did not regard this as a nonprofit activity. The Southern U.S. District Court of California reversed the I.C.C. (Pacific Coast Wholesalers Association case) and in 1950 the Supreme Court (338 U.S. 689, 691) upheld the lower court.

In a 15-year period beginning in 1946, the Commission was bombarded with complaints against various activities of a large number of shippers' associations. Many motor carriers, and motor carrier rate bureaus, as well as freight forwarders, were active in these filings because of the competitive pressures which resulted from the relative similarity of some activities of each of these shipper/hauler categories.

Finally, in April, 1959, Division I of the Commission instituted an investigation under Section 403(f) of the Interstate Commerce Act to determine whether Atlanta Shippers' Association, Inc., was engaging in services as a freight forwarder rather than as a bona fide shippers' association. A full-fledged contest developed and the outcome was historic. On May 4, 1964, Division I declared that Atlanta Shippers' Association was acting as a freight forwarder in violation of the Act. The full Commission reheard the case and sustained the principal contentions of illegal activity against Atlanta shippers.

The Commission in essence asked two basic questions about association activity, which it said must be answered negatively if

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*Congress in 1942, in Section 402 (c) of Part IV, of the Interstate Commerce Act gave full recognition to the nonprofit shippers' association concept as a non-regulated activity, excluded from the scope of economic or other regulation because the cooperatively operated associations are not of themselves carriers of freight. In 1978, in a recodification process, Congress repealed the specific wording of the 1942 statute relating to freight forwarders and shippers' associations. However, the legal status of shippers' associations remains unchanged since the identical intent of the 1942 law was put back into the 1978 revision.

an association is to stay within its legally recognized framework. First, is the association operated in such a manner that any person or persons other than the shipper members of the association possess any right or ability to control or dominate the operations? Second, can any person or persons other than the shipper members of the association bear the essential risks or burdens (and hence the right to obtain any financial benefits) from conducting some or all of the working activities of the association?

The Commission decided that Atlanta Shippers was really acting for profit and the association in essence was a for-profit freight forwarder acting illegally as a shippers' association.

The Commission also ruled that an association could incorporate without violating its privilege of remaining a nonprofit association. This in effect was an extension or at least a full clarification of a previously contested question.

The Sunshine Case

The final decision (1964) in the Atlanta Shippers' Case provided the landmark principles which have guided the Commission's and the public's viewpoint in relation to shippers' associations. However, another important case has emerged to provide additional evidence of the conditions and constraints which currently affect shippers' associations. On January 29, 1973, the Commission instituted an investigation on its own motion as to the legal status of Sunshine State Shippers and Receivers Association, Inc., et al, (Jacksonville, Florida). On July 11, 1975, Division I rendered its final opinion (Sunshine State Shippers and Receivers Association, Inc., et al, Investigation of Operations, 350 I.C.C. 391), which declared Sunshine to be a de facto freight forwarder and even though it was not found to be involved in nefarious or criminal actions, it was ordered to cease and desist, forcing its dissolution.

Present Legal Status of Nonprofit Shippers' Association

A shippers' association is an organization of shippers or receivers of freight, structured either loosely or rather formally, either an unchartered association or a legal corporation. Such associations are formed for the purpose of securing intercity transportation for their members at the lowest volume rate arrangements which exist or may be developed in the various line-haul carrier rate structures. An association accomplishes its goal by coloading or assembling the several smaller shipments of its members into trailer load, carload or other volume shipments.

Management

Shippers' associations cannot be operated by managers who are far removed from the owners, who must be the members of the association. The members, or bona fide employees of members (the traffic manager of a corporation, for example, may represent the interests of his employers in the association) must be closely concerned with the regular operations of the association. A manager as well as other operational staff, may be hired, but the entire management team must be subject to dismisal for cause. The management team can be paid increments in wages commensurate with the performance level of the association. Open-ended ballooning types of compensation, if discovered are prohibited. Such conditions may be used by the Interstate Commerce Commission as evidence to prove that the association is in reality the creature of its managers and hence a for-profit association, subject to regulation as a freight forwarder under the Interstate Commerce Act.

Associations generally must be governed by Boards of Directors that must meet often enough to be sure that they are in continuing control over the major decisions of routing, carrier selection, choice of operators for pickup and delivery, storage facilities and other regular operational problems. These Boards of Directors must be chosen annually by majority vote of the association members. Very small associations do not need to choose a Board of Directors if the activities can be managed by regular membership vote.

Records

The association must keep records sufficient to establish that its patronage dividends are handled in relation to the shipping activities of its members. It usually will charge a membership fee, and the members, or at least the Board, must vote to accept new members or to dismiss old members who no longer are interested in or participate in the association's operations.

Finance

Associations should distribute surplus savings at least on an annual basis, but the membership may authorize retention of some surplus to protect against revenue declines or similar problems. Insurance against loss and damage to members' goods may be purchased to protect the association and its members against unusual casualties.

Advertising

Shippers' associations can advertise their existence, and they can solicit new members. Because of implications found in I.C.C. decisions relating to past investigations, it had been widely believed that associations could not advertise at all. In a recent (May 15, 1981) decision, the Commission ruled that exempt shippers groups can employ representatives to contact non-members in relation to membership (see page 73).

Operations

Shippers' associations may contract with warehousemen, shippers' agents or consolidators to perform specific services that its members need to have performed. Two or more shippers' associations may coload freight if they all meet the not-for-profit criteria as bona fide associations.

Associations can operate loading and unloading facilities as well as pickup and delivery trucks, but without operating authority they may operate only within the commercial zone of a city or cities in which the association performs services for its members. This provision can cause significant trouble for some shippers' associations who serve members over a wide geographic area.

Shippers' associations are "nonprofit" or "beneficial" groupings, which are not legally comparable to the agricultural cooperatives that are controlled under agricultural cooperatives' statutes.

(But see p. 11-14.) These agricultural cooperatives now are allowed by law to haul nonmembership tonnage of up to 25 per cent of their total goods moved. This figure was established (up from 15 per cent) recently as a fuel conservation measure to cut down on empty back haul movement of the agricultural co-op fleet.

Nonprofit shippers' associations actually are not exempted from regulation -- rather they are, by specific mention, excluded from economic regulatory control. No shippers' association may be forced to report to the Interstate Commerce Commission except through formal investigative proceedings. These proceedings must be filed formally and be identified as an effort to determine if the association may be a de facto freight forwarder or intercity carrier subject to the Commission's regulatory patterns. If the association is found not to be acting as a forwarder, it is free to continue its regular operations.*

The Present Scope of Association Activity

Shippers' associations may be incorporated or may remain unincorporated as their members desire but they collectively provide little operational information. The associations which are not incorporated make reports to their Board of Directors and to their members, but there is no review of these reports by any outside group nor is there any significant effort to standardize these reports. The associations usually are geographically dispersed and often have diverse operating data. For these reasons, activities of non-incorporated associations as a group cannot be itemized or quantified either routinely or effectively.

Absence of Performance Data

Because there is no regulatory obligation in the routine sense, activities of a specific shippers' association will be externally examined only when a number of outside organizations, i.e., truck lines, freight rate bureaus or other agencies such as freight forwarder companies, file complaints with the Interstate Commerce Commission or when the Interstate Commerce Commission on its own motion undertakes such an investigation.

Shippers' Conference Study

The most definitive study currently in existence of the number and scope of activities of shippers' associations was published in 1974 by the Shippers Conference of Greater New York, Inc. This volume suggests that more than 130 associations were in operation but its foreword stated "while every state in the Union was combed for operating shipping associations, it is quite possible that one might have been overlooked."

Other Sources

In 1971, the Interstate Commerce Commission decision in Ex Parte 266 (10) noted that six statements from shipper association

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*The Interstate Commerce Commission has always been concerned with the formation and operation of shippers' associations. Appendix B is a definitive statement by the legal staff of the Interstate Commerce Commission relating to its views about legal issues concerning shippers' associations.

representatives had been received during the investigations. These six statements represented 32 shippers' associations with a membership of approximately 4,300 companies.

In 1974, Distribution Worldwide, a trade journal, listed 100 associations along with some descriptive information about each. Also in 1974, Purchasing, another trade journal, estimated that ". . . over 200 shippers' associations were in existence", although it gave no source for its estimate.

Trade Association Groups

Two significant trade associations each represent a significant list of shippers' associations. At the present time, they have no plans to merge or to cooperate significantly with each other.

The American Institute for Shippers' Associations, Inc., seems to attract large associations and large shippers as members. The National Conference of Nonprofit Shippers' Associations numbers in its membership some smaller associations whose members may in turn be somewhat smaller than for the AISA. The national conference also states that all of its member associations are receiver associations. The American Institute has associations which are either inbound or outbound in scope, and some handle both inbound and outbound movements.

PART V - ASSOCIATION STRUCTURE

Shippers' associations need to utilize an effective pattern of operations if they hope to survive as business entities. As cooperative type associations they must conform to legal controls of structure set up by the various states in which they reside. Because of their cooperative nature, finding money for formation and for expansion often creates a problem. Since a shippers' association involves the combining of freight tonnages from several sources, some way of ascertaining the existence of such quantities and the direction of movement must emerge. A simple contact session among interested shipper managers might suffice in some cases. In others, a somewhat more sophisticated survey approach may be called for. One such survey, performed as an early adjunct to this study, is reported.

Part V

Association Structure

"Membership in a shipper association can be as simple as a phone call between two shippers who agree verbally to pool their freight under various line haul carrier rules that give lower rates for larger volumes. Several impeccable bona fide associations have no formal structure at all."

-- Shippers' Conference of Greater New York
1975 Edition

This comment made in 1974 is still valid today. A shippers' association, since it essentially is an unregulated transportation activity, can take any of several structural patterns.

Fundamentally, a shippers' association can be formed whenever a group (two or more) of shippers decided that it is desirable to coload freight in order to reduce freight costs or to improve service quality.

There must be a volume of freight sufficient to produce regularity or the type of service that meets the requirements of association members. Freight volume and potential service effectiveness determine the origins that are served. If a receiving association is based at a small city, it may be necessary to enlarge the destination area -- and thus memberships to a size large enough to allow consolidated movements at some required level of frequency, which may demand the use of a motor common carrier throughout this destination area. Alternatively, the small association can coload with other associations that might have freight to be shipped either to intermediate or to more distant destinations. A final possibility would be to discover an existing shippers' association which could provide inbound service to some common point.

Organization Patterns

The organizing shippers should determine through a preliminary analysis of their shipping needs and patterns that an association will be helpful, and then decide upon a business structure and service objectives. The initial organizers also will generally decide upon a search to locate like-minded shippers, because unit freight costs will go down as the size of each freight loading increases.

Chambers of Commerce, Retail Merchants' Associations, Trade Associations and various other organizations can be helpful in recruiting and/or expanding the original nucleus of membership.

Since a shippers' association can be an ephemeral, many-sided thing the story of the beginnings of one small association, its formation and operation is included here to provide an introduction to some of the problems which must be faced in the formative period. The discussion will then move on to a presentation of the many activities which an organization must consider as it begins its life and sustains itself through its future.

Formation of New Hampshire Shippers' Association

(Narrated and Transcribed, Milwaukee, 1981)

Our cooperative started with a meeting of 10 people representing six industries located within 18 miles of Manchester, New Hampshire. Manchester was chosen because of the location of a piggyback ramp on the Boston and Maine railroad. One firm was a heavy density shipper; three others had medium density freight; and one had light density products. We had the perfect ingredients for a trailer load -- a heavy floor load topped with class 70 and class 85 items and further top-loaded with class 150 freight.

The First step: Find an area where traffic moved on a regular basis. Chicago was agreed upon as the logical site, both for the pattern of traffic movement and available railroad ramps.

The Second step: Establish what day of the week the trailer would depart. Obviously, this would need to suit our members, so after serious discussion, Friday was chosen as pickup day.

Third step: Decide whether to employ a local carrier to consolidate and load our trailers, based on a one pound per hundred handling charge, or to perform this task with our own employees. Our cooperative decided to rent warehouse space and hire a part-time employee for three hours a day to accept shipments from the carriers or members. On the day of departure, an extra part-time employee was hired to assist in loading the trailer. The bill of lading and freight bills were prepared by a member. We operated in this manner for two years until sufficient growth allowed employment of a manager. Thus, we avoided the cost of hiring a full-time employee and kept expenses low.

Fourth step: Local small I.C.C. certified carriers were contacted to file assembly rates from surrounding towns to our terminal at 15-20% below regular rates.

Fifth step: The method to be applied in assessing member freight charges. Since the association membership was small and cohesive, and because at the beginning we had only one point of origin and one destination, we established a flat rate per 100 lbs. for LTL up to class 100. For freight above class 100, we used graduated flat rates based on groupings above class 100.

Sixth step: How to finance the cooperative. It was agreed that in order to get the cooperative off the ground, each member would pay freight charges within three days, until the membership had been enlarged enough to support our cash flow position. We knew that other cooperatives had yearly dues of $50, $100 or $500, and that we might factor our invoices at a local bank at a relatively low cost. This would have been possible only because of the high credit rating of our initial members.

When these issues were settled, it was time to form the cooperative. New Hampshire law required that Articles of Agreement had to be drawn up. We had this done by a general business attorney at a cost to the association of $1,500. He started with the purpose of organizing the corporation: to form a nonprofit shipping association for the purpose of reducing our freight transportation costs, and consolidate less truckload shipments into volume shipments for movements via rail or truck; to purchase, lease or sell real estate in conjunction with the operation of the cooperative's business.

A number of meetings were held to discuss each article. Each one had to be hammered out and voted on. Bear in mind that in 1959 very little information was available pertaining to cooperatives. Our work was effective, however, for our bylaws and our operation were scrutinized by the Interstate Commerce Commission in 1964 and no change was recommended or sought in their final report.

Forming an Association

Based on the previous example and other evidence, it can be seen that the formation of an association will vary according to the needs of the initial group of members. Any new association also will adapt its method and scope of operations to keep up with its assignment of serving the shipping needs of its membership.

Initial items that must be confronted by a new association are:

1. Scope of Operations
2. Makeup of Membership
3. Form of Organization
4. Governing Rules
5. Methods of Financing
6. Selection of a Management Pattern
7. Staffing

The forming group must decide upon a preliminary scope of operations, a tentative membership list and a structural pattern. It also must decide how the association's formative and operating expenses will be met; what staff members, if any, will be needed; and how to live within the legal structure of the state in which the "home office" is located. For example, if an association is being formed in Ohio and if Ohio requires all associations to register as nonprofit enterprises, the group must comply with the statute.

Scope of Operations and Membership List

After two or more interested shippers/receivers join to consider ways to reduce shipping costs and to improve service reliability, they will need to define a suitable area of operations. Although some larger scale associations could be formed quickly, most associations will grow more slowly. For that reason, this discussion will center on small beginnings and relatively small volume operations.

The two or three most heavily used routes and the shipments most often moved by the forming group will be the probable scope of operation for early development of the association. Each founding member will need to consult with others in the general area to determine like-minded shippers who might be induced to join the association.

As part of this process, the general feasibility of the association also will change because there are economies to be gained by increasing membership size.

Types of Organization

Any new association probably will want to be incorporated as a nonprofit organization, based upon laws of the state in which the association is formed.

Although some of the organizing members may have working arrangements with specific attorneys, it is important to obtain the services of a lawyer familiar with formation and operation of nonprofit business entities. In many states, there are peculiarities in filing, taxation and organizational requirements which when recognized early in the structuring of an organization, can prevent many serious problems later on.

Among other reasons for the corporate form is the need to protect the individual against operational types of lawsuits, including personal liability suits. The nonprofit corporation is a suitable legal form for operating purposes and for reporting to the Internal Revenue Service, because a nonprofit operation, properly handled and reported, is not subject to income tax. This nonprofit legal entity accurately portrays the intent of the association. Also, some recognized nonprofit legal structure is desirable in the event of investigation by the Interstate Commerce Commission.

Governing Rules

The final legal structure of the organization will be codified in a set of bylaws or Articles of Association. The bylaws of a shippers' association will vary somewhat from organization to organization, as dictated by individual needs and state law. The following is a general statement of some of the major points which should be included in nonprofit shippers' association bylaws.

SAMPLE BYLAWS OF SHIPPERS' ASSOCIATION

1. Offices: Location of the organization's offices including state, city, county, etc. will be given.

2. Purposes and objectives: A brief discussion of purpose of the organization will be included. Usually, the bylaws outline the fact that the organization will pool and consolidate freight as well as purchase transportation and accomplish distribution of merchandise for its members. There also may be specifications relative to prompt, efficient distribution, interchange of ideas and methods of transportation.

3. Membership: Classes of membership should be described. Method of application for membership, acceptance and term of membership should be specified.

4. Membership fees: The initiation fee, if any, and annual dues, should be spelled out in detail. Special assessments to be used in cases of emergency or to generate new working capital for use in expanding their operation, etc. will be described. Normally, the amount of special assessments will be limited, and this should be clearly defined.

5. Membership meeting: Frequency of membership meetings as well as information relative to voting, either in person or by proxy, should be spelled out.

6. Board of Directors: The structure, membership, offices, meetings and term of office for the Board of Directors needs to be defined. Also, information as to how vacancies will be filled is included, plus a description of the duties and responsibilities of the board members.

7. Officers: A description of the various officers and their duties and responsibilities should be made.

8. Operations: A brief description of the operation of the organization should be included, such as assessment of pickup charges, disposition of freight and delivery charges, etc. Members' liability as well as some discussion of rates and charges to be assessed is usually incorporated in this section.

9. Claims: The organization's liability is spelled out in detail. Remember that the organization reserves the right to limit its liability.

10. Distribution: There should be an item in the bylaws dealing with distribution of any earnings each year. It should be clearly defined that the organization is operating on a nonprofit basis.

. . . .

An important point to keep in mind when writing bylaws is to be certain that items which change frequently, such as dues, dates of meetings, and so forth should be establihsed by the Board of Directors, rather than specified. Using this device, the bylaws need not be amended every time the association wishes to make a small change in the amount of a fee or the time of a meeting. This is not to say that these items should not be clearly stated or limited, but that dollar amounts or specific dates of the year should be avoided if possible.

The foregoing is not intended to be a complete analysis of all matters which should be incorporated in a nonprofit shippers' association's bylaws. The bylaws should vary from organization to organization, based upon specific needs and advice of counsel.

Operating Control

The bylaws set the pattern of control, and policy is administered through the Board of Directors. The Board makes major decisions relating to financial matters; it will usually approve new members and remove old members who are no longer active; it will approve the purchase of new facilities and equipment; and it will recommend to the membership any important policy changes pertaining to association management and control. Board meetings should be held regularly, and accurate minutes of the meetings must be kept.

The Board will, if the association is of average or larger size, appoint an Executive Committee of some three or four members to be in touch with routine operations of the association and to act for the Board if immediate action is necessary. The Executive Committee also will be available to the salaried manager or the head of the management operating company, if one is used.

The day-to-day operation of shipping, billing, receiving, collecting and similar matters will be handled by a paid staff or the paid management consulting company. It will be the duty of these staff members to keep abreast of new rate situations; altered routing or other shipping instructions; movements of freight and revenue protection, both in collections, filing of claims and changes in potential or real traffic flow. The operating staff also will determine if changes are needed in shipping terms or carrier designation. Members of the association should convey any new information to the staff, but the task of day-to-day effective operations resides with the staff.

Early Financing

A shippers' association ultimately must pay its own way, or it will cease to exist. Sources of revenue for an active association will be as broad as the activites of the association itself, for none of the work performed by an association should lose money, although not all activities of the association will be equally profitable.

Most associations operate on a share of the savings which their activities produce for their membership, but associations may operate on assessments or other revenue-generating patterns.

The Board of Directors will decide upon a method of early financing which could be an assessment of membership fees for each participating member. If there is a nonmember cooperative sponsor such as a Chamber of Commerce, the early expenses may be absorbed, or handled as a loan to be repaid once the association is receiving revenue from its own operation. Some existing associations have been assisted financially by a loan in money or staff time (note that a member made up the bills of lading and freight bills for New Hampshire shippers for two years), from one or two members who are significant shippers. This is a rare occurrence and is not likely to prove as workable as the membership assessment patterns.

The money of the association belongs to the members and should be accounted for carefully. To treat each member equitably, records need to be kept that indicate members' participation in the business of the association so that equitable settlements can be made if there are savings to be distributed.

Staffing Operations

Effective day-to-day handling of the work of an association should mean success for any association. These day-to-day operations are the essential work that is carried out by personnel employed for these tasks. The members tender freight and expect the staff to get it moved.

There are two general methods for handling activities. One procedure is to hire a general manager and other section managers or employees needed to perform the tasks of handling freight, billing and collecting accounts; keeping up with rate changes and the many other chores which go on almost continuously if the association is to function properly. The other procedure is for the association to employ a qualified management team which, for a fee, will perform these day-to-day assignments.

As stated earlier, there probably are more associations now using management consulting teams than those with a directly employed operating staff. Both forms are completely acceptable to the Interstate Commerce Commission, and there is a wide diversity of opinion among association members as to which operating form is most effective or suitable.

It is probably correct to say that the smaller, rural associations in existence today use the salaried staff plan in which a group of employees ranging from 2-10 people perform most of the operating tasks of their associations. This may be true for either of two reasons: first, the management tasks may be so limited in size that it would be difficult to find an effective consultant group available and second, in many smaller communities, the consultant pattern does not exist to any appreciable degree.

Staffing Experience

Information collected three years ago in contracts with 28 operating associations provided interesting specifics in relation to staffing. Sixteen of the 28 associations reported that only one person was classified as permanent staff. These associations with the small staff size ranged from 30 to 850 members.

The other 12 associations in this group of 28 had staffs that ranged from four to seven members, and the association memberships for these groups ranged well above the pattern for the 16 small associations.

Some of these associations performed their own warehouse/collecting functions but most used consolidators and distributing agencies.

In contrast to existing small associations, newly-formed small associations in larger areas may use a different staffing procedure. One association has recommended the pattern set forth below as a plan to start and develop a small association in a larger area.

The logical first step in this pattern is to contract with a transportation management firm, or some group of a similar nature. This firm must have continuing access to or have on its staff qualified people who understand rates, tariffs and claims procedures and who are familiar with routing and handling of traffic. This makes it possible to start an association on a small scale, and it avoids problems of hiring people, setting competitive salary levels, putting in benefit packages and similar personnel services for an in-house staff.

However, the impression is widespread that if an association is to grow, if it is going to attract a lot of members and move a lot of tonnage, the association probably will want to plan an eventual transition to self-management. In this situation, the association hires a general manager and clerical staff, with its own personnel.

Under these circumstances, the association exercises greater control over the total operation, and if the staff is fully capable, unit costs of operating the association should decline. However, when an in-house staff is employed, competitive salaries will need to be paid, because people who are capable of running an association are going to be attractive throughout industry. Continuity of operation of the association will demand that once qualified people are found, the association must make a serious effort to keep them.

Joining a Shippers' Association

Most of the preceding discussion has been on how to form an association. At this point it is important to suggest that joining an existing association may also be a viable alternative for the shipper. Exhibit 1 on the following page illustrates the simplicity of inquiry into joining one active association. Most shippers' associations welcome any new members who ship freight which is generally compatible with the association's activities and objectives. For this reason an association generally would request information about both the quantity and character of the freight of any prospective member.

The most difficult hurdle in joining a shippers' association is often the shipper's own legal department. Using the guidelines above may be helpful to a non-member shipper in evaluating the organizational and operational management of an association and the feasibility of joining. A shipper must be prepared to remain watchful over the affairs of the association if his original evaluation is to remain secure with the passing of time. If this approach is used in participating in association activities and benefits, risks will be minimal. It is the "absentee" shippers' association member who takes risks. For responsible, active members, there is probably no more legal risk than in using a for-hire carrier.

Some shippers' associations may be found disinterested in attracting more members simply because further growth will not product additional savings for them. A number of others are bursting at the seams and new members could create new problems. In these cases, a new association may be necessary and suggested.

The following is a general checklist by which a potential member may scrutinize an existing association:*

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*Adapted from LIST OF NON PROFIT SHIPPER ASSOCIATIONS, Shippers Conference of Greater New York, Publication, 1975.

Exhibit 1

Membership Application

The following is an example of the type of membership application used by an existing association. The exhibit is intended to show the simplicity of the contractual arrangements involved in the membership application. It is not necessary at this stage to disclose details about the tonnages, revenue, routing or other operational specifics of your company.

MEMBERSHIP APPLICATION

We (I) hereby make application for membership in __________, and agree to comply with the By-Laws, Rules and Regulations of the association.

It is understood that upon payment of __________ admission fee and acceptance of this application by the Board of Directors of the association, we shall be entitled to all the rights and privileges accruing to members of the association.

I understand that the association will invoice my company for charges on OUTBOUND prepaid shipments and INBOUND collect shipments.

NAME OF COMPANY ______________________________

MAILING ADDRESS ______________________________

STREET ADDRESS (if different than mailing address)____________

Name of person to whom mail should be directed: ______________

Signed by: ______________

Date signed: ______________________ Title: ______________

1. Check the roster of the Board of Directors.
2. Review the list of officers and their actual duties; check the officers' connection with the association (if they are other than a shipper member, get all details.)
3. Check the certificate of incorporation if incorporated.
4. Carefully review the copy of the constitution and bylaws.
5. For detailed information on the current status of the association, review the minutes of the meetings for the past full year.
6. Review the membership fee and the method of application approval.
7. What rating system is used? Who determines and what is the savings distribution formula, if any?
8. How do members at large participate in the determination of rates, etc.?
9. How are surplus earnings, if any, apportioned to members?
10. How often do officers, board and general membership meet?
11. If the association uses a manager, can the Board of Directors fire him?
12. Request detailed information on the physical operation including all consolidators, distributors and other contractural arrangements.
13. When was the last certified audit of the association's books made?
14. Request one-half dozen or more members (other than the board and officers) for reference.
15. Check to be certain that all underlying carrier services are legitimate.
16. How are claims handled?

Keep in mind that the absence or presence of a satisfactory answer to any of these tests does not establish the ultimate legality of any association.

Efforts to Form an Association

As has been pointed out on page 39 throughout this chapter, two basic ingredients must be available to form a shippers' association. First, of course, must be shippers who for one reason or another think an association may be helpful. The second ingredient is freight, moving in sufficient quantity in the same direction to enable coloading.

The New Hampshire Shippers story on page 40 indicates the steps which its ten original members took. In many cases, however, the prospective forming members will need to reach a larger audience than a few interested parties. Either an informal or formal survey of shipper potential is likely to be needed to answer basic questions of tonnage and direction of movement.

During the earlier stages of this study a survey of a particular county in Georgia was undertaken. The procedures and the findings of that survey are presented below in order to show how one survey was conducted. Each area in which an association is being considered would of course confront local problems which would vary considerably from this effort.

Field Research in Georgia

One of the prime objectives of the phase one study effort at Georgia State University was to try to determine if at least one community within a specific study area might have the necessary conditions to activate and maintain a shippers' association. Along with the necessary physical and economic conditions was to be a search for a "need" for a shippers' association and a willingness on the part of some leaders of the community to attempt to start such an association.

The accomplishment of this task entailed investigation into economic conditions surrounding shipments into and out of a given area. It also required evaluation of the interest and willingness of some community leaders to become active in evaluating the concept of shippers' associations.

From the start it was recognized that local cooperation would be needed and it was determined that in this area the local Chambers of Commerce would be the most suitable (and in some instances the only viable) agency to work with.

Original contacts with all of the heads of the Chambers of Commerce were satisfactory except that the paid manager of one County unit was ill and away from her office at the start of the field contact effort.

In each case, local leaders were identified and efforts to secure cooperation were made, usually with reasonable success, although the concept of not-for-profit shippers' associations was new to practically everyone contacted. The results of the most successful effort to obtain economic data is given below.

Field Investigation

At the start of the study the Chamber of Commerce agreed to mail out a questionnaire, with a covering letter, to its membership and the executive secretary agreed to give further support on a personal basis.

Newspaper and radio coverage was obtained prior to sending out the questionnaire, which was mailed by the Chamber of Commerce at its expense. However, no return envelopes were sent with the questionnaires and the mailing was not directed to individuals by name but to heads of companies, and no followup effort was undertaken by the Chamber staff. Still, a return of approximately 7.5 per cent, including a few significant shippers, was received at the Chamber of Commerce office.

Since the returns from this mailing were not "bad" but also were not truly representative, it was decided to make a more intensive personal effort to obtain more complete information. The new executive secretary of the Chamber of Commerce cooperated significantly, and the president-elect (for 1980) of the Board of Directors expressed his genuine interest.

Prior to the beginning of this renewed effort, contact had been made with the freight solicitation section of the only rail service in the County. These officials were sympathetic to our efforts in a general way and offered to assist where possible. When the study team returned to the area, a list was provided of the thirty or so largest rail shippers on whom the solicitors called with some degree of regularity. Also, the name of each executive who was most significant in handling freight movements at these companies was provided. This information was most helpful in making contact with the individuals most involved and thus improved accuracy and speed of contact in the later drive for information.

During November, two research team members went into the field to support the renewed effort to obtain additional data for the study in relation to freight movements into and out of the area. The new executive secretary, and the whole staff of the County Chamber of Commerce cooperated fully, and an industrial development specialist of the regional Planning and Development Commission staff also joined in this effort.

The mailing list that the Chamber of Commerce had used in its previous mailing of the questionnaire was used to provide company names and addresses. The Chamber's secretary assisted in dividing the city into four quadrants and in analyzing the mailing list to identify the businesses that fell in each quadrant. In addition, the owner or manager of each business was identified by name whenever possible. Also, businesses such as banks and real estate offices which seemingly would have little or no need for goods movement per se were removed from the list. In this manner the original list of over 450 was pared to slightly over 200 firms.

During a two-day period, three interviewers obtained questionnaire responses from 23 firms, several of which were large shippers. It was apparent that an additional group of businesses could be contacted if the effort could be continued. Since travel time and costs would be lower, the regional APDC agreed to allow its staff member to return to the area at her earliest convenience and continue to visit these businesses.

These personal visits by the research team eventually generated fifty responses in addition to the seventeen received from the original mailing done by the Chamber of Commerce. Sixty-three of these sixty-seven responses were usable. The other four were incomplete and not used.

Survey Results

Important specific results were obtained in response to the total set of efforts to acquire usable survey data. Sixty-three usable responses were obtained, and the results are shown on Table I, p. 55. It is estimated that this is more than 30 per cent of those firms which are regularly involved in shipping or receiving freight. Because of the extent of response from large shippers, it is felt that the totals obtained may represent approximately 50 per cent of the tonnage volume of the county.

The firms that responded were segmented into five categories based on the primary function of each firm. Two of the firms were classed as agri-business since they were dealers primarily in fertilizers and crops. The industrial category was subdivided into large industry (over 100 tons per week) and small industry. Twelve firms fell in the category of small industry while the remaining five firms were classified as large. The majority of firms reporting (forty-one) were retail establishments. The remaining three firms were classified as wholesalers.

1. Agri-business. The two firms in the agri-business category reported primarily inbound freight movements because their outbound business was primarily in exempt commodities. The average number of inbound weekly shipments fell in the range of 50-2,500 pounds. The inbound annual expense for the two firms represented totals approximately $40,000. The reported outbound expenses annually were rather small ($2,500-3,000). Other "outbound" or delivery costs were absorbed by the company as operational expenses for the use of company trucks.

2a. Large Industry. The industrial category was divided into two sections: five firms which showed freight movements greater than 100 tons per week and those which reported lower volumes. For those industries reporting over 100 tons per week, the majority of inbound movements (136) are over 20,000 pounds. The other inbound shipments received by these larger shippers are small shipments between 50-500 pounds (30 of these). Scheduled shipments are about equally distributed between intra and interstate movements. There are also a considerable number of non-scheduled intrastate movements (26) but a rather low number of non-scheduled interstate shipments (7).

Outbound movements are also primarily 20,000 pounds or more (197). There are a few shipments (5) that fall in the range of 500-2,500 pounds. The majority of outbound shipments are sent intrastate by scheduled carriers. The remainder are split roughly equally between intrastate non-scheduled, interstate scheduled, and interstate non-scheduled, with the least number in this latter category.

The combined tonnage of intrastate inbound movements is 629 tons a week, with intrastate outbound movements totaling 4,548 tons per week. Interstate inbound movements are relatively high at 3,862 tons per week, while outbound interstate movements are considerably less, 1,505 tons per week.

The total annual freight expense for inbound shipments in the large industrial category is $687,500. The outbound expense is slightly less at $577,500.

2b. Small Industry. The twelve firms that fall in the category of smaller industries ship on the average less than 100 tons a week. Inbound movements of these firms are fairly evenly distributed in the number of shipments that fall in certain weight ranges. The largest of these categories is 500-2,500 pounds, which covers 40 shipments a week. The smallest number of shipments a week (8) falls in the range of 5,000-10,000 pounds.

The distribution of outbound movements is similarly evenly distributed with the largest category also falling in the 500-2,500 pound range (40 shipments). The smallest category of outbound shipments is 10,000-20,000 pounds with 10 shipments.

The number of inbound intrastate movements is mostly by scheduled carriers (40) but with a considerable number by non-scheduled carriers as well (33). Interstate movements follow this same pattern with slightly more shipments being scheduled than non-scheduled.

In outbound movements, the trend is much more heavily weighted toward scheduled carriers both intra and interstate. There are only a small number of non-scheduled intrastate carriers (16) and an even smaller number of interstate (7).

The weekly tonnage figures for intrastate inbound movements total 244. Interstate tonnage is much less with only 30 tons a week. Outbound movements also show this trend toward intrastate movements with this figure being 110 tons per week while interstate tonnage is only 63 tons per week.

In the category of small industry the total inbound annual expense is $395,000. The outbound figure is much higher at a total of $877,000.

3. Wholesalers. There were only three firms that were classified as strictly wholesale firms, but there were four other firms that classified themselves as both retail and wholesale firms. Following the usual pattern, these four were included in the retail category because retailing appeared to be the predominant activity.

Among the wholesale firms most of the inbound shipments fall in the 20,000-pound and up category (40). The remainder fall between 5,000-10,000 pounds.

A large majority of outbound shipments (70) are less than 50 pounds; the rest are 20,000 pounds or more (40).

Non-scheduled intrastate inbound movements are slightly larger than scheduled movements. All of the inbound interstate movements are non-scheduled.

The majority of outbound movements are intrastate by scheduled carrier; outbound non-scheduled shipments are split evenly between intra and interstate movements. All outbound interstate shipments were reported to be by non-scheduled activities.

The tonnage of inbound movements intrastate is very heavily weighted towards non-scheduled carriers, 303 tons a week as compared to half-a-ton by scheduled carriers. All inbound interstate movements are by non-scheduled carriers with total weekly tonnage of 104.

Outbound movements are also heavily weighted toward non-scheduled carriers. In intrastate movements the comparison is 200 tons a week non-scheduled and slightly over a third-of-a-ton a week for scheduled. Again, for interstate movements all 200 tons a week are shipped by non-scheduled carriers. The annual inbound expense of wholesalers is $85,000, while the total of outbound movements is $302,500.

4. Retailers. In the retail category, the majority of inbound shipments fall in the range of 50-500 pounds. The remainder of the shipments are divided among the other ranges with most of them falling in the lower categories and the least number (3) falling in the 20,000+ range.

Outbound movements are all small, most of which fall in the 50-500 pound range and a few that are less than 50 pounds.

The majority of inbound movements are received from scheduled carriers, both intra and interstate, with 45 and 53 shipments respectively. There are 14 intrastate shipments by non-scheduled carriers and 27 interstate non-scheduled.

The tonnage per week of inbound movements intrastate is predominantly by scheduled carriers, with 37 tons per week as compared with 18 by non-scheduled carriers. In interstate movements the scheduled carriers, who moved 33 tons per week, had a slightly higher volume than the 31 tons per week for the non-scheduled carriers.

The tonnage per week for outbound movements is very low compared to inbound. In intrastate movement scheduled carriers transport slightly over one ton per week as opposed to only an eighth-of-a-ton per week by non-scheduled carriers. This trend is reversed, however, for interstate movements with non-scheduled tonnage at 3 tons per week while scheduled carriers haul only one ton per week. In retail trade the annual expense for inbound shipments is $310,000, while the expense for outbound movement is only $40,000.

Summary. Based on these reports (October-December, 1979), all of these categories taken together seem to indicate that the largest number of shipments both inbound and outbound fall in the 20,000+ category. There are also a good number of inbound shipments (122) that fall in the 50-500 pound range. The remainder of shipments, both inbound and outbound, are fairly evenly distributed over the other six categories.

In inbound movements the trend is toward a larger number of scheduled carriers both intra and interstate. This is also true of inbound tonnage weekly, with much more tonnage falling on scheduled carriers interstate.

The majority of outbound movements are intrastate by scheduled carriers. The remainder of shipments are about evenly distributed among the other three categories with the least number of shipments being sent by non-scheduled carriers interstate. The weekly tonnage of outbound movements falls in a similar pattern, with the largest number (3,622 tons per week) as intrastate scheduled and the least number (637 tons per week) as interstate non-scheduled.

Finally, sixty-three firms provided information for this study. This is approximately 30 percent of the "universe" deemed to make regular use of freight service.

A variety of patterns was found in relation to scheduled or non-scheduled service.

The reported outbound annual expense for all reporting firms was over $2,100,000 and the inbound annual expense was approximately $1,800,000. For the reporting firms, this shows a combined total of $3,900,000 spent for transportation service in the area. If the assumption is correct that this represents approximately 50 per cent of the total freight bill for the county, it is axiomatic that there is ample volume available in the county which might benefit from participation in a shippers' association.

Table 1

FREIGHT MOVEMENTS, TONNAGE AND REVENUE , 1979

Inbound and Outbound
Scheduled and Non-Scheduled

	INBOUND					OUTBOUND			
	Intrastate		Interstate			Intrastate		Interstate	
	Sch'd	Non-Sch'd	Sch'd	Non-Sch'd		Sch'd	Non-Sch'd	Sch'd	Non-Sch'd
RETAIL									
Number Shipments Weekly	45	14	53	27		3	2	8	3
Tonnage Weekly	37	18	33	31		1	1/8	1	3
Freight Expense Annually		$310,000					$40,000		
Retail Freight Revenue, Inbound-Outbound					$350,000				
ALL OTHER CATEGORIES									
Number Shipments Weekly	124	90	99	46		241	93	90	47
Tonnage Weekly	549	628	3,605	465		3,621	1,238	1,134	634
Freight Expense Annually		$1,490,000					$2,077,500		
All Other Categories Freight Revenue					$3,567,500				
GRANT TOTAL FREIGHT REVENUE					$3,917,500				

Exhibit 2

County Code _____ Business Class _____

Southwest Georgia Transportation Service Questionnaire

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1. Indicate the number of your shipments that fall within the groupings below.

	Outbound Weekly	Inbound-Weekly
50-499 lb.	_____	_____
500-2499 lb.	_____	_____
2500-4999 lb.	_____	_____
5000-9999 lb.	_____	_____
10,000-19,999 lb.	_____	_____
20,000 + lb.	_____	_____

2. Indicate the carrier pattern and inter/intra state aspects of your freight move.

Inbound Movements	# Shipments-Weekly	Tonnage Weekly
Intra-state		
Scheduled Carrier	_____	_____
Non-Scheduled	_____	_____
Inter-state		
Scheduled Carrier	_____	_____
Non-Scheduled	_____	_____
Outbound Movements		
Intra-state		
Scheduled Carrier	_____	_____
Non-Scheduled	_____	_____
Inter-state		
Scheduled Carrier	_____	_____
Non-Scheduled	_____	_____

3. Which of the ranges shown below best represents your annual freight expense?

	Outbound-Annually	Inbound-Annually
$0-4999	_____	_____
$5000-9999	_____	_____
$10,000-24,999	_____	_____
$25,000-49,999	_____	_____
$50,000-99,999	_____	_____
$100,000-499,999	_____	_____
$500,000 +	_____	_____

PART VI - ASSOCIATION OPERATION

Once formed, a shippers' association must perform an effective service to justify the continued support of its membership. The two basic problems, providing effective service over routes which are suitable and ways to establish charges for services, require that association managers be adept at saving money for members while still moving the freight efficiently. Rate schedules must be set and claims and insurance procedures must be established. Membership levels must be maintained and legal conditions must be met. Good financial management is vital since the profit motive is not present to demand continuing effectiveness. Some associations fail to satisfy the full range of requirements and dissolve or go bankrupt. A recounting of reasons for the failure of one association is included because it points up the needs for success as well as the paths to failure.

Part VI

Association Operation

How to Operate and Maintain an Effective Association

Formation of a shippers' association is a significant step and requires a substantial amount of knowledge and effort to bring it about.

This effort is minor, however, in comparison to the knowledge, work and devotion to duty required to operate and maintain an effective association or other significant freight-handling activity.

Shipment of freight across America and to and from foreign countries is a continuing daily task that the nation and its citizens do not fully appreciate because it is done behind the scenes, as far as the public is concerned.

What the public can't see is the never-ending effort to get these tasks accomplished at reasonable cost. The only time the public may become aware of these activities is when there is a nationwide rail or truck line strike and the system comes to a quick halt. Then, the public, the press and the government all demand that something be done so life can get back to normal as quickly as possible.

The well-run shippers' association is an effective part of this massive and generally cohesive but cluttered effort to move the nation's goods. The tasks which a shippers' assocation must face on this continuing basis make up the subject of Part VI.

Issues Related to Freight Handling

Service Levels

Association managers must determine what service patterns members require and then working on getting an acceptable operating plan. They key often is to determine what kind of service customers actually need, because what is wanted and what is needed are viewpoints which often are in conflict. If all transportation customers had their ideal service then almost everything would move via "air express." Most shippers don't usually require overnight service, especially if they recognize the high cost of such expediting. When these true costs are known, shippers generally will schedule their activities to help hold down transportation costs. If good scheduling can be maintained, many shippers can get by with six or seven day service. Consequently, an association manager must develop a workable balance between these conflicts. If reliable intercity movements can be maintained, most customers can be served adequately with consolidated ground movements.

The shippers' association occasionally needs to hold freight for a day or more to fill a trailer and sometimes rail piggyback service is not as fast as over the road service, but it is becoming more reliable and acceptable. Many variables affect service by a shippers' association, but the key is volume. Members must contribute enough volume to a given market to allow loaded trailers or trucks to move effectively.

Reliable effective scheduling of individual movements by the shipper members is important. It is also important to have timely freight delivery to the loading dock. An association has to keep up with changes in service requirements if it intends to survive. Also, those intercity haulers who usually supply the associations with equipment must be fully aware of the importance of on schedule movement to a destination.

The association needs to be especially careful when snow, ice or floods create movement problems. Under these conditions, usable equipment may be very hard to locate and consolidation managers as well as destination distributors need to be particularly careful and helpful in handling movements effectively at these times.

Routing policy for shippers' associations can be a complicated problem if the manager allows his shipper members to recommend or demand that certain carriers handle individual freight movements. It is desirable to route freight via the best service and the best price, but to be too strict about best price and service can limit the willingness of some shippers to use the association. In such cases, the director of the association has to realize that routing policies may demand some flexibility. The management needs to have an open mind and a realistic approach to dispatching but it cannot utilize favoritism and survive.

Freight Flow Patterns Under Association Operation

Inbound Shippers' (Receivers) Association

The merchants in any city or group of cities generally receive freight from many points, i.e., Chicago, Philadelphia, the New York - New Jersey area as well as smaller points like the furniture manufacturing areas of North Carolina or the carpet mills of North Georgia. At each designated point of origin, the association will engage a consolidator to act or it must set up its own consolidation service. These agents accept less than trailerload or less than carload freight and consolidate it into volume quantities. The consolidator then dispatches the volume shipments in the name of the shipping association from the point of consolidation to the destination city. When the association is freight receiver, the shipments normally are on a collect basis. To utilize the service of the association, the members route their freight, naming the association as the carrier and identifying the consolidator by name and address.

In addition to accumulating freight from within the consolidation city, the consolidator often will receive freight brought in vendors' trucks as well as shipments via common carriers from outlying areas. The total freight volume then is grouped by the consolidator for movement in association service from the consolidation point. The freight bills for goods received via a local service motor carrier at the consolidation point can be prepaid by the association member or the freight can be, and frequently is, moved collect to the consolidator who forwards charges to the association for the account of the member.

In the end, the total handling costs for association service, including all the costs of assembling and consolidating at origin, break bulk and delivery, as well as over the road transportation, are billed to the member by the association when it makes delivery of its freight. Some of the cost items described above are reflected in the association's rates. Other costs, such as advanced charges, are billed to the member's specific shipment in the exact amount in which they are incurred.

Outbound Shippers' Association

When the shipping point is situated in the home city of an association, the operation is physically the same as utilizing a common motor carrier or freight forwarder. However, instead of the individual shipper calling a motor carrier to request pickup service, the association is notified and it arranges to have a vehicle dispatched to pick up the shipment, (in some cases, the association allows a discount as shipments are brought to the terminal facility.) The bill of lading will name the shipper association as the shipper of record and the route to be used by the shipment. Thus the association will handle the intercity movement and delivery to consignee. The movement can go prepaid. In this case, the association will bill the consignee but of course the consigner may bill the consignee if the terms of sale permit.

In cases where the sender is not situated in the home city of an association, it is still possible to use the group in a pool distribution operation. For example, assume there is a manufacturing facility in the greater New York area generating significant number of LTL shipments destined for Chicago, Milwaukee, Minneapolis and/or St. Paul. A shipper association in Chicago offering service to the destinations listed is contacted and the New York manufacturer joins that association. After joining, the multiple shipments are consigned to the Chicago-based association. Thus a combination of 16 LTL shipments which together would weigh 5,000 lbs. could be forwarded to XYZ shippers' association, Chicago, Illinois.

Upon arrival, XYZ would move the 16 shipments to ultimate destination via their service. In this example, the shipper would be billed at the 5,000 lb. rate for the line haul Chicago, Illinois, and the various shipping association LTL rates from Chicago to the various destinations. Note that the shipper would be billed separately for 16 shipments, to the separate destinations. This procedure would be comparable to making the same 16 shipments LTL direct from the plant in New York to Milwaukee, Minneapolis, etc., except that unit total costs for the movement would be materially less.

Patterns for Rate Setting by Associations

(A system which can be used only when like commodities are being moved or when Freight All Kinds (FAK) rates are applicable.) Under this procedure, each member participating in a particular load is billed by the association for his percentage share of the cost of the car or trailer movement as charged by the carrier.

Direct Actual Cost Assessment

For example, a 20% shipper in a carload movement is billed for 20% of the cost. The association also will add to this carrier cost its own prorated costs for items like dock handling and administrative and clerical costs. Other costs attached to the movement, such as cartage costs (if any) to the loading dock or from destination dock to plant dock are billed by the cartage company direct to the shipper/receiver as the case may be.

This procedure provides simplified billing, and the association has no need to establish or publish rates or tariffs of any kind. Also, if rate structures change, the shipper automatically pays the full cost and the association does not need to worry about cash flow or recovery of funds advanced etc.

The disadvantages are small to regular shippers. Unfortunately, the shipper doesn't know his exact cost until he gets a bill. This is true because the association may be operating under authority to ship "best way." This would mean that under certain circumstances a 36,000 lb. car would be dispatched rather than waiting so that only 50,000 lb. loads would be utilized. Rates for these two load sizes would vary and the shipper would pay a slightly higher rate for his share of the 36,000 lb. car than for the 50,000 lb. movement.

The association also may have authority to ship piggyback rather than rail car. In this case, rates would be different because of the difference in service patterns.

Under direct assessment, members would need to post audit their movements to know exactly what savings they were achieving. Prior to such audit the members would be trusting that their association was doing an effective job in saving them money over conventional freight charges.

Published Schedule of Rates

Under this procedure, the association would send out to its members rate schedules similar to regular freight tariffs. The schedules would cover only the freight customarily moved under association auspices and would apply only between points customarily served. The basis for developing these "quotation sheets" would be the existing tariffs which would apply for similar moves over lines of existing common carriers. The association, based on its past performances and costs, would quote rates for members' freight which would cover the line haul costs and the other costs which the association must incur, such as pickup and delivery, terminal operations, billing, insurance and other operating and administrative costs.

The advantage of this system is that the member can compute his costs prior to movement. This can be very important in quoting delivered costs in competitive situations. It also is a rather simple system and it can be computerized both for information and billing.

The disadvantages to the association in using this system relate to business fluctuations, rate changes and cash flow. The association must keep constantly abreast of its line haul and cartage carrier costs. The rates quoted to members shouldn't be lower than the carrier charges which the association must pay.

Also, the association under this system pays the carrier companies and waits for its payback from its members. Cash flow can become a problem to the association if members become lax in paying their bills on time. Under this system, money management becomes a crucial issue. In the actual cost assessment procedure described previously it would not be a factor.

Discounts off Common Carrier Rates

The third general pricing procedure used by associations is to announce to members that it will charge the applicable regular common carrier tariff, less a stated percentage. For example, the association may announce to its membership that movements of items of Class 50-100 will be billed to members at 15% less than the regularly published tariffs for like items and like distances. And items in classes above 100 might be billed at 20% less than the regular tariffs.

This system lets the shipper know exactly what his charges will be prior to movement, if the member is aware of the current tariffs in use. Like the Published Schedules Plan, it also puts burdens upon the managers of the association in relation to business fluctuations, rate changes and cash flow. Again, the association is in the money management business. It must be ready to raise rates as well as to pay out surpluses which arise or meet losses if the management is not quick enough in spotting changes in carrier rates or other costs of performing its services. Also, in the discount system and published schedule plan the association must confront the problem of bankruptcies among carriers, warehousemen and among its own membership. Money and cost issues such as these lie at the heart of questions raised so often by advocates and opponents of shippers' association activity.

Rate Comparison

This rate comparison from a Milwaukee-based outbound shippers' association covers six destinations which are from 781 to 2,201 miles from the Wisconcin city (Exhibit 3). These six city pairs (Milwaukee, New York, Atlanta, Denver, Dallas, Miami and San Francisco) were chosen to provide examples of service between major market areas and over a wide variety of trip lengths. The Rate Class 100 is chosen for this illustration, and the 100 lb. shipment is emphasized but the other bracket weights are valid. The common carrier rates are based on Bureau Class plus 3.3 percent fuel surcharges. The rates were computed as of March 30, 1981, by the Wisconsin Shippers' Association.

For each city pair, costs were compared between Common Carrier and Wisconsin Shipper Association rates at five different weights (min., 300, 500, 1,000 and 5,000 pounds) for rate class 100. For example, from Milwaukee to San Francisco for 1,000 lbs. of freight, if a company in Milwaukee ships at Class 100 via the shippers' association, it will save $111 over the Common Carrier charge. The average savings in these comparisons ranged from 12-40 percent in contrast to common motor carrier prices.

Exhibit 3

Cost Comparison-Motor Common Carrier vs. Wisconsin Shippers' Association
Rate Class 100 - Motor Carrier Rates are based on Bureau Class plus 3.3% Fuel Surcharge
Rates for origins outside Milwaukee via W.S.A. are combinations of common carrier inter-state rates to Milwaukee plus W.S.A. dock service rates

Origin/Destination	Weight of Shipment	Rate via Common Carrier	Cost = Col. I x Col. 2 x 1.033(F)	Rate Via Wis. Shippers' Association
Milwaukee-New York	Min	2807	2807	2800
	300 lb.	2012	6235	1538
	500 lb.	1756	9070	1439
	1000 lb.	1527	15774	1220
	5000 lb.	1116	57641	985
Milwaukee-Atlanta	Min	2992	2992	2750
	300 lb.	1878	5820	1661
	500 lb.	1624	8388	1455
	1000 lb.	1365	14100	1169
	5000 lb.	945	48809	767
Milwaukee-Denver	Min	3080	3080	2600
	300 lb.	1903	5897	1398
	500 lb.	1662	8584	1398
	1000 lb.	1545	15960	1242
	5000 lb.	1186	61257	1036
Milwaukee-Dallas	Min	3094	3094	2600
	300 lb.	1943	6021	1256
	500 lb.	1854	9576	1161
	1000 lb.	1766	18243	1092
	5000 lb.	1264	65286	980
Milwaukee-Miami	Min	3331	3331	3150
	300 lb.	2500	7148	2232
	500 lb.	2268	11714	2061
	1000 lb.	1920	19834	1657
	5000 lb.	1363	70399	1171
Milwaukee-San Francisco	Min	4242	4242	3000
	300 lb.	3231	10013	1769
	500 lb.	2800	14462	1641
	1000 lb.	2516	25990	1485
	5000 lb.	1993	102938	1240

Exhibit 3 (continued)

Origin/Destination	Cost = Col. 1 x Col. 4	$$ Difference	% Difference	Mean Savings	Distance
Milwaukee-New York	2800	07	-0-		
	4614	1621	26%		
	7195	1875	21%	$\overline{X}$ =	901 mi.
	12200	35.74	23%	17%	
	49250	8391	15%		
Milwaukee-Atlanta	2750	242	8%		
	4983	837	14%		
	7275	1113	13%	$\overline{X}$ =	781 mi.
	11600	25.00	18%	14.8%	
	38358	10459	21%		
Milwaukee-Denver	2600	480	16%		
	4194	1703	29%		
	6990	1594	19%	$\overline{X}$ =	1034 mi.
	12420	35.40	22%	20.2%	
	51800	9457	15%		
Milwaukee-Dallas	2700	494	16%		
	3768	2253	37%		
	5810	3766	39%	$\overline{X}$ =	998 mi.
	10920	73.23	40%	31.4%	
	49000	16286	25%		
Milwaukee-Miami	3150	181	5%		
	6696	1052	14%		
	10305	1409	12%	$\overline{X}$ =	1443 mi.
	16570	32.64	16%	12.8%	
	58550	11849	17%		
Milwaukee-San Francisco	3000	1242	29%		
	5307	4706	47%		
	8205	6257	43%	$\overline{X}$ =	2201 mi.
	14850	111.40	43%	40.4%	
	62000	40938	40%		

It was speculated by the manager of the Milwaukee association that if one decided to utilize an association, if conditions were similar to those of this illustration and if 20,000 lbs. were shipped once a week for one year, savings might be as high as $62,000 for that year.

(It is not possible to make an assumption here about weight and class comparison for potential savings as only data for one class is shown. For cross-class data for larger shippers' associations see An Examination of Unregulated Shipper Association, T.A. Brown Report #DOT-P-50-80-71 Avail. National Technical Information Service, Springfield, VA.)

Usually, there is a definite relationship between distance and savings, but this is not fully precise nor can one predict savings based on distance except where the full circumstances of the movement are known. Factors other than distance may be partly or wholly responsible for the largest saving on some long-distance shipments. Prices may be lower, for example, in certain areas because of the heavy volume of freight within that area. Therefore it can only be speculated that distance can potentially increase savings.

In the material presented, there appears to be a positive relationship between savings and the distance shipped, but a negating factor to distance savings in general is that there be a balance of inbound and outbound shipments.

Notice that in the case for the Milwaukee-Miami movements, distance does not appear to relate to the savings percentage. What may account for this fact is that often there is significant difficulty in getting full backhauls out of Miami.

Freight Insurance and Claims System

An important consideration once an association has been formed, is how shipments will be protected in case of loss or damage, so the association should establish a policy for claims at the outset. For the same reason prospective members should inquire about cargo insurance before they join any association.

An association can decide to leave the purchase of insurance to each member, thus removing itself from liability. This may work for a few associations whose membership is composed of large corporations that have traffic and insurance specialists, but it will not be satisfactory with a large number of smaller LTL shippers.

Associations should negotiate claims agreements with their regular carrier partners. "Hidden" damages are difficult to pinpoint as to exact time and cause of loss, so a cooperative policy often is possible in these circumstances.

Associations usually will carry broad coverage against losses over an entire movement from pickup to delivery, but subrogate their coverage so that the obligation of pickup carriers, line haul carriers and delivery carriers will be utilized whenever possible.

Cargo insurance policies can be purchased with deductible clauses which protect against catastrophic loss. This will protect the association against large claims which may be impossible to assign accurately to any one handler of a shipment. These problems may occur in piggyback movements, because trailer unloading is an unwatched activity. Also, it is widely known that damage claims filed on piggyback plans $2\frac{1}{2}$ or 4 are virtually impossible to collect unless water damage, theft in yards, or breaking of seals can be proven. Any association insurance plan must specify how these various costs will be assigned.

With any association insurance plan, a policy has to be established for paying insurance costs. This will either be treated as a current operating expense or be assessed against potential profits at the end of the accounting period. The obvious effect is that insurance costs of the association are reflected in the price of shipping to members.

One problem that associations, and especially association members, have to confront is the issue of double jeopardy on freight charges. If a trailer load shipment is made and the association is paid for this movement by the shipper, the shipper is still liable to the carrier for these charges, if something happens to make the association insolvent and thus unable to pay the carrier. Hence the shipper members must be alert to the day-to-day status of his association, financially as well as operationally.

Issues Relating to Association Effectiveness

The organization of a shippers' cooperative can be completely unstructured or tightly controlled, depending on the size of the operation and the desires of the membership. Most of the large dollar volume shippers' associations are highly structured, and they all are incorporated in conformity with the laws of the respective states in which they are chartered.

Articles of Incorporation and Bylaws

The purpose of the corporate charter is to set up a corporate entity listing the name of the association and its reasons for existence. Thus it spells out what the association can and cannot do. It limits the liabilities of the individual member as a general rule. The advantage of limitation of liability is one explicit benefit of incorporation which in itself may be compelling in this regard.

The second legal document which careful shippers' associations use is a set of bylaws. Bylaws are basically the rules of the organization established by the members. They establish corporate officers and their subsequent duties. They are, in effect, the framework or constitution of the association. Each member of the association should be familiar with the bylaws and see that they are enforced and adhered to by association officers, all employees of any management agency, as well as by all members of the association.

Financial Management and Related Issues

Although the movement of freight is the prime function of a shippers' association, the way in which an association manages its money is of paramount importance to the continued existence of any association.

The issue of start-up funds has been considered elsewhere, but related to this is the question of a permanent policy on membership dues and its related problem of membership assessments if they ever are needed. Many associations that have had large start-up fees have since reduced initiation and annual fees to quite low levels. Large fees tend to inhibit new membership, and the general trend is toward enlarging memberships whenever this is a viable alternative.

The association will have to develop a budgeting process which must be studied and approved by the Finance Committee and then the full Board of Directors. An outgrowth of the budgeting activity will provide overall accounting procedures, including reports on profit and loss as well as the status of any reserve funds which may be established.

The development of annual financial reports (as well as monthly and quarterly reviews) will be influenced by the decision of how to audit the books of the association. Most of the larger associations utilize "name" auditing firms. A well-handled audit made up by a reputable firm will be a significant selling tool to show any prospective new members. Since all profit-making businesses require careful auditing, the same treatment of an association's annual reports will make easy reading for the decision makers of potential members.

There are a number of people who will be handling large sums of money for the association whether they work directly for the association or not. If the management company itself is not bonded, it will be wise to pay for bonding insurance for them. Employees who handle money and the association itself need to be protected against the possibility of loss or theft from such funds.

If the association maintains an automobile for membership contacts, automobile insurance will be necessary. Fire and theft insurance to cover the association plant and other facilities will be needed.

Another issue which must be resolved is the question of cash reserve accounts. There are questions of staff salaries if the association hires its own personnel. Also, as discussed earlier, cash flows from accounts may fluctuate, and the association may want to provide a reserve fund for developing new service territories.

The potential for strength of an association is increased by establishing safety funds. A safety fund will guard against fluctuations that occasionally occur in cash flow. For instance, some members won't pay their invoices as quickly as the association is required to pay for the line-haul services and other activities. It is also wise to protect against the time when unexpected rate increases come into effect. By the time it is possible to change rates, the association's cash base may have been dangerously depleted.

A safety fund could also be used for opening a new territory. When a new market is opened, the total charges for serving that territory often amount to more than the association collects. Until a larger tonnage flow is developed, funds will be needed to cover that operation. Like the motor carrier, as association also will have expenses for general administration and staff, terminal costs, paper work, record-keeping and so forth.

Accounting to Maintain Nonprofit Status

A well-managed association will develop accounting information providing "profit" and loss statements as any other corporations would do. This will demonstrate the level of operational and managerial competence on a year to year basis and it will provide the basic information on which patronage refunds or distributions will be made. In this manner the association will be able to maintain its nonprofit status so vital in legal considerations.

In filing an income tax return, the association files a regular tax return which should show no profit and therefore there is no Federal Tax. Most state taxes which might become applicable are predicted on a percentage of the same amount of income that one would pay in Federal tax, thus State taxes are largely avoided. Some states, such as California, will require a minimum tax, say $100 a year even though you make a case for zero taxable income. Yet generally under the nonprofit status State and Federal taxes are avoided. This is an important reason to maintain a nonprofit status. There are some taxes which still have to be paid such as local property taxes, State and Local sales taxes, Federal unemployment and Social Security taxes, but the basic income tax exemptions are significant advantages to the association.

Diversification of Membership

There has been a considerable amount of attention paid to the concept of shipment and membership diversification as a key to a stable association. The suggestion here is that a key feature of a successful shipping system is having a broad base of membership.

One way to achieve this stability is to get smaller companies into the association initially. They can learn how to cooperate among themselves so that if a large company enters later, the smaller member had knowledge of its own benefits and thus will not feel totally dependent upon the larger members. If the smaller members come to rely totally on the shipments of the large company and the larger shipper pulls out of the association, the whole organization could fold.

Some members and managers feel that a rule of thumb factor is to be wary of an association where one large shipper contributes 60% of the association volume. A counter to this argument is that large members may make an association viable and thus induce potential members who otherwise would not have joined the smaller association. How far these goals are pursued by any association will differ as the associations and their service territories differ.

Rural shippers are often faced with problems when they attempt to broaden the base of their associations. One important problem for rural shippers is the possible crippling effects of such organizations of small parcel shippers as U.P.S. Secondly, there is the problem of labor costs. "The union gets approximately 70 cents to the dollar of a shipment," is a common shipping sector comment. Obviously, if costs cannot be controlled this will discourage smaller rural shippers from attempting to utilize a shippers' association.

Advertising

The issue of shippers' association's advertising for new members or for additional freight services has been one of the most controversial subjects in the shippers' association area. The guidelines for advertising had never been spelled out in a specific manner, but had emerged from ICC decisions over the past 40 years of the association movement. The concept of a cooperative seemed to demand that the membership spread the virtues of the organization to other businesses without formal advertising and soliciting by members or staff.

The current ICC position has brought change to the advertising climate. On May 15, 1981 the ICC acted upon this issue and the Commission has found that nonprofit shippers' associations may use representatives to advertise advantages of association membership without losing their ICC regulatory exemption status. The Act does not specify the scope of permissible solicitation.

The ICC acted on a request filed in early 1980 by the Ohio Valley Shippers' Association that the ICC declare that exempt shippers' groups can employ representatives to contact non-member shippers and receivers to solicit membership under 49 USC 10562 (3). The Ohio Valley Shippers stated that "its purpose is to permit associations to reduce transportation costs for members by consolidating freight for movement at volume rates." They also stated that they would not solicit traffic from non-members or engage in profit-making activities but rather cite to non-members the advantages of association membership.

The ICC concluded that section 10562 (3) permits such use of associations' representatives but warned that advertising that results in (1) loss of member control of association activities, (2) profit or (3) mere solicitation of freight of non-members cannot be permitted.

The benefits from this decision are numerous. A few of these benefits are: first, the ICC opinion which allows advertising "cushions" the association movement by ensuring that membership to associations can be gained through advertising. This can add viability to the shippers'association concept. Secondly, the small shipper may now, either through newspaper, association newsletter or yellow pages, hear about the association concept and seek more specific information leading to membership. Also with this opinion on advertising it may mean more associations may emerge or more members may join existing associations. Lastly, associations may devote less time to worrying about the appropriate way to have potential members informed of their existence and put more effort into management and operational considerations of the association.

Associations do Fail

Information relating to successful associations and benefits to their members is plentiful, but not all associations have been successful or enduring.

It has been stated that some associations have been closed by action of the Interstate Commerce Commission. It also has been intimated that some associations have disbanded when a dominant member decided to withdraw from membership.

An Example

The specific problems concerning the financial and operational collapse of one association were presented to a shippers' association study conference which this writer organized in 1980. The facts in this case are so enlightening that they are included on the following pages as Exhibit 4.

Exhibit 4

AN ASSOCIATION THAT FAILED

Excerpted from Comments of
Bob _____ and others
at a Study Conference

University of Oklahoma
June 16, 1980

In 1973 I was approached to come and manage XYZ Shippers' Association which was formed in 1972 under a contract with a professional in a Southwestern state who intended to serve two adjoining states with one operation.

The shippers' association was formed in 1972 and received its charter in '73. For a little over a year, they operated out of New York City into one community making, I think, a total of five shipments and on each one of the shipments they lost money. The manager's salary was on a percentage basis. When he saw that he was losing money, he withdrew the operation from its first location and shifted it further west with the intention of "backhauling" into the earlier location, using common carrier class rates.

It took them about—it took the members about six or seven months to realize that they didn't have such a good deal, in fact, it was actually costing them about 25 percent more than common carrier. It was at that point —the earlier Manager left and I was approached to become the new Manager.

It seemed to me like a good challenge, and I accepted the position. There had been no record keeping whatsoever except by a few of the members who had made notes on scratch paper and so on, but they did tell me that they had a little money in the bank and we agreed upon a contract, and within about three months the bills started coming in from all over the clear blue sky. I never had seen so many line haul bills and contractual services all over the United States, and—to make a long story short, it took about nine months to really get a hold of what contracts had been made and line hauls that had been made and consolidation services here and there, all over the South and Chicago.

The end result of that, much to my disappointment, was that they were around $16,000 in the hole. And at that point I was just about ready to get out, but then I made an unwise decision; I decided to stick it out.

The theory of shippers' associations is solid and the next mistake that I made was that I did start some things that would bring in participation from the Board. Up until that point, all they were concerned with was their shipments. That was it. And so I did bring them out some—generate some enthusiasm of the Board through the law as it applied.

I started pointing out to the Board of Directors their responsibilities, and this seemed to help and the freight did start flowing in.

And this was my second mistake, in that I took the savings right off the top and charged the members 20 percent less than the going common motor carrier rate.

Now, if at that point we had gone ahead and assessed the total freight bill and put the money in the bank into an interest-bearing-type fund, we would have been able to survive and actually save the members some good money. Needless to say, they were delighted with what they were seeing after some 30 months of losing money, but they were concerned only with their shipment, not in the overall—of supporting the association and bringing it up to a viable organization.

Each year taught me another lesson. We were having a lot of problems, even after the freight started flowing in, especially with cash flow. Everyone was pleased with the service, but they just didn't want to pay the bill.

Sometimes it would run as high as four months—before accounts would be paid I heard things like, "Well, we have got a little slack business right now, and as soon as it picks up, why, we will pick all that up, we will pay it off right up to date."

And of course, the association was having to carry the daily expenses.

As a manager, I kept very good records. At this time we were 'successful' and began to plan for the future. In fact, we became so successful there for a period that the state in which we were chartered decided that they should have a little piece of the pie, so the State Tax Revenue Department came down on us and levied an assessment. That I defended successfully and received an exemption, a one of a kind exemption for the XYZ shippers' association in the state, because it was an inbound association and everything was moving in Interstate Commerce. So that saved the members a little over $5,000.

As a solution to the cash flow, we established the first freight-payment plan to be known in our state through a savings and loan association, and this would pay interest on any monies that the members placed in the plan.

In effect, they were picking up another five and a half percent interest, looking at it in one light.

Things were going along pretty good at that time, in 1978, and I tendered my resignation. In the following month they selected a new manager, and I left the association and started consulting in January of 1979.

I'm not real sure what happened. When I left the association, their net savings had come to a little over $120,000 for the 48-month period, and their obligations to pay themselves out complete was $32,000. So they would have netted out some $88,000 in savings during that time.

In reflecting, I can see that the generation of knowledge that has been brought about within the profession of managing associations is tremendously valuable. The adding of new services and actually never owning any equipment seems to be very important. We did get out and worked with the members and we would have members send in their freight bills and make analysis of them and we could show them where they would actually save money if they would follow the routing guides.

I drew up routing guides. I used just about every technique that I could think of, beg, borrow or steal from any of the professionals in the business but these efforts weren't enough. The association declared voluntary bankruptcy last—November, about a year after I left.

MR. LEMLY: Question?

MR. DALE ______: Comment. Bob's problem, I think, stems, and I feel very strongly about this, and any new association that is formed, and Phil ______ over here touched on it so well, in order to have a good association, you must have a Board of Directors that actually knows what's going on at the association, period. Without that, you can't function.

MR. BOB ______: I can't emphasize that too much. I think there are too many small business people who maybe look upon a manager as being their salvation. They really don't want to devote the time to it that it takes, or you get a strong person in, an egotist, that wants to be president and he's going to be president every year, and he, more or less, dictates to the board what is going to be done. Now, we had that situation I lived with for several years. But, it should be a Board of Directors well balanced in knowledge from all sectors.

MR. LEMLY: Any other comments?

MR. DON ______: I would make one comment to that. In our state, to combat this, we have strived to have the people in top management or ownership on the board, because they became interested in the bottom line dollar and not in the entertainment of their employees, a counter to a solution to that problem.

MR. DALE ______: You probably found the same thing I have, Don, and I have nine men on my Board of Directors. I have no trouble at all in corraling the freight from the nine members that are on the board, it's the other 140 out there that really don't understand the shippers' association.

CONCLUSION

The not-for-profit shippers' association is a valid part of the freight transportation community. Its legality has been affirmed by the courts, Congress and the Interstate Commerce Commission over many years.

Shippers' associations must operate so as to maintain their legal exemption from regulation. They also must perform effective service to their membership, primarily through the movement of consolidated freight tonnage.

Shippers' associations located in low traffic density areas can perform effective service but the problems confronting associations in such areas are greater than where traffic flow is heavy. These problems place a greater burden on members of such associations, as well as on management and Boards of Directors. It also calls for a high degree of cooperation from serving carriers and from the general business managers, who live and work in these areas. Finding and keeping capable, dedicated managers probably is the greatest single need for the success of shippers' associations in low traffic density areas. This is a real challenge but it is one worth meeting by the interested shippers and business leaders of low traffic density areas. An effective shippers' association is a real economic asset to the people and the territory it serves.

APPENDIX A

THE ACTIVITIES AND EFFECTIVENESS OF SHIPPERS' ASSOCIATIONS
STAFF STUDIES CONDUCTED AT
GEORGIA STATE UNIVERSITY - 1978-1979

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STAFF STUDIES CONDUCTED AT GEORGIA STATE UNIVERSITY - 1978-1979

Interest in shippers' associations was growing in the decade of the seventies, but little was known or written about them.

In order to have definitive information about the extent, performance and effectiveness of shippers' associations, the staff of this study undertook two examinations relating to shippers' association performance. One study aimed at specific operators and operations. The other study dealt with hypotheses to consider the more academic aspects of legality, continuity and effectiveness.

I. THE OPERATIONS STUDY

Valid information for the first study was difficult to obtain. Eventually, a selection of associations was drawn from a comprehensive listing of approximately 130 organizations which was published in 1974 as a public service by the Shippers' Conference of Greater New York, Inc., a group associated with the Transportation Division of the New York Chamber of Commerce.

This selection represented a careful effort to choose from the "130 nonprofit freight-pooling shippers' associations in all parts of the country"--those associations which seemed: (1) to be shippers, i.e., movers rather than just collectors or distributors; and (2) to operate in less densely populated areas of the country.

The organizations so selected were contacted by telephone and were sent a relatively simple question sheet to obtain operating data. These units also were asked to identify other similar organizations. In all, forty-five associations were identified and twenty-eight of these organizations provided information to the study team. As a result, a substantial body of useful information was developed and strong support for the shippers' association philosophy was discovered. Exhibit 5 (see page 83a) contains the full tabulation of significant data from these reports.

The reports provided by the twenty-eight cooperating associations covered much more than operating data. All of the information provided was carefully analyzed and much of this analysis is presented below.

One of the paramount questions in the minds of most students of shippers' association operations relates to effective size (or comparative smallness). Sixteen of the responding associations were found to be quite small and a special effort was made to examine their operations. The following presentation relates to the answers of these sixteen associations.

A. Responses Relating to Operations and Effectiveness

1. Of the sixteen associations responding (col. 1), thirteen said that they were principally receivers, two were producers (shippers only), and one unit said its activity was evenly split between receiving and shipping.

2. Eight associations had less than 75 members (col. 2). Seven units had memberships of 100-350 and one unit had approximately 850 members.
3. Of the sixteen associations only two had a staff as large as three employees, and six of them operated with a single staff person (col. 3).
4. Six units said their staff payroll (col. 4) was $25,000 or less, eight associations said their staff cost was $30-$40,000 and two units did not respond.
5. Two units said they needed (or a successful unit would need) 875 tons of freight per year, four said 1,000-2,000 tons would be required (col. 5). Three associations felt that 2,500-5,000 tons would be needed. Four units had no answer to this question and one manager stated that tonnage per se was not the issue but the total mix of tonnage, mileage, and quality of freight. He also added that with "good balance" an association could function effectively for an expense equal to 6-10% of the freight cost involved. Two others had somewhat similar answers about the quality and service patterns of effective operations.
6. Questions relating to the number of shipments needed (col. 6), number of shipments made (col. 7) and total tonnage moved (col. 8) produced a variety of answers which were probably as diverse as the areas served and the types of goods handled.
7. In relation to dollar volume for inbound movements (col. 9A), three units handled less than $200,000, four units reported volumes between $200,000-$500,000, and seven reported more than $500,000 in freight charges per year. Collar volume for outbound activity (col. 9B) varied as follows: one unit reported approximately $50,000 outbound (its inbound was $500,000+) and two reported volumes of over $500,000.
8. Seven of these sixteen associations served only retail establishments, four served both wholesale and retail companies, three associations counted retailers, wholesalers, and manufacturers in their membership, and two were involved only in agricultural business activities.

B. Further Responses

1. Seven of these sixteen associations are located in southern states, seven might be classed as having midwest or northern locations, and two were based in the Rocky Mountain area.
2. Only three of the respondents failed to offer advice about operating a successful association. All of the others had a variety of suggestions, but one manager had such an interest that he sent a list of several needs of a successful association. They are produced below:
    a. Board of Directors must be an active board on financial and policy matters.
    b. Manager and staff must be knowledgeable on administration and technical matters of transportation.
    c. Consolidation and distribution facilities must be located where you have flexibility of various modes of transportation.
    d. Association rates must be structured so that savings patterns are equal to all members regardless of what commodities each member may ship.
    e. Tight controls must be maintained on over-short and damaged freight.

f. Associations must have excellent procedures and controls on payment of charges to the carriers that transport the shipments to the consolidation points.

g. Proper claim procedures must be established to serve the association on lost and pilfered shipments.

h. Other managers sent other comments. One said that there should be no part-time employees. He also said:

> "First and foremost, successful associations must have a cohesive group of founder and charter members large enough to quickly obtain the initial objectives of the association in terms of tonnage and service. Therefore, a concerted and unending effort must be made to broaden the tonnage base of the organization, both in terms of gross tonnage and in the types of commodities handled. In other words, associations limited for example to general wholesale firms dealing in housewares and related commodities will always be vulnerable to changes in marketing practices of such members, and will be doubly vulnerable to the threat of losing one or two dominant sustaining members, which can emasculate a small operation."
>
> "Most successful associations (in terms of service and general freight rate levels) are those which have a mix of retail merchandise going to chain store members or other retail stores, wholesale merchandise going to wholesaler-jobber-distributor memberships, and industrial-type freight such as paint, machine parts, textile products moving to manufacturers, dyers and cutters, etc. A broad mix of commodities and a heterogenous membership protect the association from some of the adverse effects of rising and falling markets on a season basis, and other economic swings that occur seasonally within a particular industry."
>
> "Regardless of the size of an association, it should be managed by a professional staff and not by shipper or receiver members working part-time conducting the affairs of their association. The members through their elected officers and directors should establish policy and exercise those responsibilities imposed on them by law, and the day-to-day operations of the association should be handled by the employed staff."

i. A small Southern association sent this advice:

> "Since the shippers' association depends upon competent carriers and cartage agents for its successful operation, it is essential that rate negotiations, and such other negotiations with the carriers as are necessary, be explicit (preferably in writing). Cooperative has experienced some problems with carriers in the past because this was not done; . . . The success of the association is mutually dependent upon the participation of the members, the

competence of the association's staff, and the working relationship with the carrier(s). Freight rates and transportation laws and rules are constantly changing; therefore, the need for an individual with a working knowledge of such information to serve as manager of a proposed association is virtually a must."

C. Comments from Managers of Larger Associations

1. "Most successful associations (in terms of service and general freight rate levels) are those which have a mix of retail merchandise going to chain store members or other retail stores. A broad mix of commodities and a heterogenous membership protect the association of some of the adverse effects of rising and falling markets on a season basis."

2. "Most important is the complete support and interest of members."

3. "Legal -- this area includes proper involvement and participation of the members and the board. This is a revolving and mutual problem of both the management team and the membership. Stimulation of interest is the board's job, and the ability to manage under the membership's direction is the task of the management team."

4. "The distance between origin and destination must be far enough to create a savings large enough on line haul from shipping point to break bulk point to cover costs on shipments originating outside of shipping point and shipments being delivered beyond receiving point."

5. "Since the shippers' association depends upon competent carriers and cartage agents for its successful operation, it is essential that rate negotiations, and such other negotiations with the carriers as are necessary, be explicit (preferably in writing). The success of the association is mutually dependent upon the participation of the members, the competence of the association's staff, and the working relationship with the carrier(s)."

6. "Full compliance with all I.C.C. and state regulatory rules and regulations."

7. "It's a complex business. Would suggest you attend one of our meetings of the National Conference of Non-Profit Shipping Associations. Next meeting in San Francisco in November."

8. "It would seem like a very difficult project to accomplish, since most cooperatives operate in varying geographical regions and handle a variety of commodities."

9. "Strong communications and relationship with members."

D. Comments from Associations About Service Outside Commercial Zones

The associations had a variety of answers to this question. The principal answer was to use short haul carriers who had appropriate operating authority. In some instances, goods which were to be transhipped for rather long distances were reconsolidated and sent forward by long haul carriers. In instances where substantial distances were to be covered, the associations made use of carriers who published assembly and distribution rates and "who demonstrate a desire to work with the association." Associations also develop routing guides for their members so that the most effective plan of assembly to consolidation points is possible. Associations who use rail or truck for longer hauls also negotiate for F.A.K. (freight all kinds) rates and make use of cooperative local cartage agents. Finally, some of the associations have so little movement outside commercial zones that they leave this problem up to the members on an individual basis.

E. Comments from Operating Associations as to Why Some Associations Failed

Several association managers referred to the demise of the Atlanta Shippers' Association and to that of Sunshine Shippers' Association in Jacksonville. These cases have been fully explored in the legal report.

One small southern association reportedly was closed because it "could not get service from railroads and truck lines." Another small southern association closed because it lost its strongest member and the remaining members could not carry on without that support. A third small southern association "utilized a local warehouseman on a commission basis." When two major members decided to do their own consolidation work, the association collapsed.

A midwestern association closed because "its percentage of good tonnage dropped below a viable level. Some of its larger accounts went to private trucks or to other methods of shipment." Another unit "lost its manager and the new manager wasn't well enough versed in the freight business." Another midwestern association which was reported to us as still active reported, "We stopped operations because we could not control losses due to shortages."

A western operation which had operated successfully found that it could not provide the same quality service which was offered by a neighboring competitive activity. Some large members went to the competitive system and the original association closed.

II. WORKING HYPOTHESES FOR ACADEMIC EVALUATION

After careful review of (1) the comments received from the diverse group of operating associations and (2) comments from other shippers, carriers, and regulatory personnel, the study staff developed lists of issues which seemed to be relevant to the creation of a successful shippers' association, especially in a low traffic density, low population area. These issues then were used to elicit responses from a group designated as the Select Group of Transportation Professionals, a short list of qualified transportation professionals with whom the chief investigator would correspond in relation to this study. The first mailing to this group included the Issues paper and asked for criticism and further comments. Section A below presents the issues used and Section B gives the answers developed.

A. Issues Relating to Creation and Successful Operation of a Shipper's Association

1. How much tonnage (in relation to some "mix" of types, quantities and value of goods) must be available to allow a shippers' association to derive enough earnings (through deductions in shipping costs due to consolidation) to "pay its way" in the long run? This issue must be resolved through:
    a. Significant study of the patterns of operations of existing associations, and
    b. Careful examination of the potentials which might exist in the localized study areas.
2. Which of the study localities is most suited to effective operation of a shippers' association from the following viewpoints:
    a. Adequate tonnage
    b. Cooperative attitude from:
        1. Local governing officials
        2. Chamber of Commerce
        3. Shippers
3. Can broad support for a shippers' association be developed?
    a. This support must include regulatory acquiescence.
        1. I.C.C. acceptance at least on a trial basis.
        2. State Public Service Commission support on intrastate activities.
    b. Local community generally and shippers specifically.
4. Interstate and intrastate operation questions must be resolved with at least one or more carriers.
    a. Interstate operating authority currently is held by several carriers.
    b. Intrastate authority is rather closely held for long distance movement.
5. Pickup and delivery services outside of "commercial zones" or terminal areas must be arranged.
    a. Is there a local short-haul carrier which will perform this "peddle" service?
    b. Must the association seek operating authority to perform such service?
        1. It would need authority from Interstate Commerce Commission.
        2. It would need authority from State Public Service Commissions.

B. Testing the Hypotheses

As stated previously, a short list of professionals was developed. After the issues statements were developed, a letter of explanation and inquiry was sent to the members of this group and responses were sought to the questions which seemed to be raised by the issues. The responses received to these issues are presented below.

1. Responses from Transportation Professionals:
    a. Formation of shippers' or receivers' associations in significantly rural areas:
        1. One professor said that a possibility might be to "marry" receivers' associations with the agricultural cooperatives who might be hauling exempt commodities out of the area.
        2. All respondents made comments about possible functions which might be appropriate for a local shippers' association. The list below covers the suggestions. One respondent, an I.C.C.

practitioner, questioned the inclusion of auditing freight bills and routing shipments "unless the association is set up expressly for this purpose."

Satellite warehouses
Terminal warehouses
Auditing freight bills
Consolidating, inbound and outbound
Packaging
Legal advice
Routing

b. Territorial issues:

1. The professional group did not feel that the operational issue of developing adequate contacts to perform interstate service into and out of a shippers' association territory would present a major problem if the management of the association exercised good judgment. One professor stated that the problem of getting authority or finding connecting carriers was a political rather than an operational issue. Others noted the recent willingness of the Interstate Commerce Commission to grant new authority almost on request. Three respondents referred to the rather recent willingness of the I.C.C. to accept pooling agreements between long haul carriers and short haul lines which help to provide better service to low density areas. The issue of intrastate service was discussed by some but not all of the respondents -- one professor stated that in his area intrastate service authority was a problem. Another noted that California had relaxed this issue almost totally. Another commented that the move toward relaxation of authority and restrictions by the I.C.C. should help encourage state commissions to do the same.
2. The use of short haul carriers was the universal choice for handling pickup and delivery. All agreed that the use of association trucks would be troublesome and costly.
3. One respondent suggested the use of "end of track" distribution and accumulation centers as a device to help keep trucks fully loaded. One respondent commented that his state had authorized "hourly rates applying to radial service from specified points."

c. Tonnage needs and tonnage availability:

The question of how much tonnage, and its "mixture," was recognized as perhaps the "major" problem by all of the respondents. Thus, the question is how much tonnage (in relation to some "mix" of types, quantities, and values of goods) must be available to allow a shippers' association to derive enough earnings (through reductions in shipping costs due to consolidation) to "pay its way" in the long run. It was agreed that this issue would have to be resolved through: (a) signicant study of the patterns of operations of existing associations and (b) the careful examination of potentials which might exist in the localized study areas. One respondent made a major point that differing types of potential members such as chain stores, independent merchants and others would create differing problems for an association. All agreed that only careful empirical analysis will answer this question.

d. Cooperation from outside sources:

The question of obtaining a cooperative attitude among local governing officials, chambers of commerce, and diverse shippers and receivers was recognized by all as another issue of significance. One respondent specifically, and others at least inferentially, recognized that cooperation from carriers also would be necessary. Obviously, the long run test of effectiveness of an association would be vastly influenced by its ability to obtain both adequate rate structures and timely hauling by the line haul carriers.

e. Other specific comments:

1. Pooling of traffic has been recognized by the I.C.C. as a help toward long haul costs and deficiencies in local service (see p. 28).
2. It will be hard to find viable situations to organize successful organizations (obviously referring to small towns).
3. A major problem in setting up new shippers' associations some years ago was in getting receiver members to work at developing desirable and beneficial routings. Shippers (sellers) don't care about this, they just pass costs on to receivers, who think, generally, that they can't influence routing (or benefit from it).
4. Small shippers and receivers have little choice but to organize and seek what benefits they can salvage, in this day of high rates and extensive changes in service.
5. Cooperation, or at least a hands-off pattern by carriers, is essential.

Exhibit 5

RESPONSES RELATING TO EFFECTIVENESS OF SHIPPERS' ASSOCIATIONS

Association Number Code	Receiver[a] -1-	No. of Members -2-	Staff Size -3-	Staff Payroll -4-	Tons Needed -5-	Shipments Needed -6-	Annual Shipments -7-	Annual Tonnage -8-	Dollar Volume Inbound -9A-	Dollar Volume Outbound -9B-	Type Industry Served[b] -10-
1	100%	60	1	$12-$15,000	1000	cannot answer	impossible to state	1500	$50,000-$199,000	--	1
2	80%	600	24	$38,000	2500	10,000	230,000	13,500	$500,000+	$500,000+	1,2,3
3	2%	1,500	4	$75,000	10,400	5,200	67,000	115,000	up to $49,999	$500,000+	1,2,3
4	100%	125	7	$100,000	2000			2000	$500,000+	--	1,2
5	100%	75	1	$30-$40,000	2000		67,000	3000	$500,000+		1,2
6	100%	100	1	n/a			rec'd 5,300	561	$75-$85,000	--	1
7	stopped operation January 1971 - could not control losses by shortage										
8	50%	75	4	$45-$50,000			5,000+	300,000 not including grain	$500,000+	$500,000+	1,2,3
9	--	300	2	$30,000+			50,000	30,000	--	$500,000+	1,2
10	functions as a traffic department - quotes rates and suggests inbound and outbound routings - pre-payment audit of freight bills										
11	discontinued operations in 1976 due to inability to gain the commitment of large volume receivers										
12	60%	6000	6	$60,000	100		50,000	1000	$500,000+	$500,000+	1,4
13	100%	30	2 or 3	$10-$15,000				500	$200,000-$499,999	--	1
14	100%	850					88,000	700	$500,000+	$500,000+	1,2,3

Exhibit 5 (continued)

Association Number Code	Receiver[a] -1-	No. of Members -2-	Staff Size -3-	Staff Payroll -4-	Tons Needed -5-	Shipments Needed -6-	Annual Shipments -7-	Annual Tonnage -8-	Dollar Volume Inbound -9A-	Dollar Volume Outbound -9B	Type Industry Served[b] -10-
15	100%	165	2	$30-$35,000	5000	15,000	75,000	20,000	$500,000+	--	1,2,3
16	100%	130	1+	$12,000			4,500	1625	$500,000+	--	1
17	100%	350	2	$30,000			16,577	8500	$1,268,473	--	1
18	100%	850	1	n/a	875		275	775	$200,000-$499,999	--	1
19	80%	70	1	$10-$15,000	1326	10,000	50,000	5400	$500,000+	Up to $49,000	1,2,3
20	50%	66	2	$30,000				400-500,000	$7,000,000	$13,000,000	4
21	95%	110	1	$20,000			500,000	500,000	$500,000+	$500,000+	4
22	100%	300	2	$30-$40,000	2500			4500	$200,000-$499,999	--	1,2,3
23	100%	300	4	$40,000+				3000	Up to $49,999	--	1,2
24	100%	75	2	$25,000	2400		35,000	3000	$200,000-$499,999	--	1,2
25	--	45	2	$30,000+	service requirements and savings required by members		70,000	27,500	--	$500,000+	1,2
26	100%	40	2	$37,500	2000		30,000	2250	$200,000-$499,999	--	1
27	100%	75	5	$75,000	5000		16,000	7500	$500,000+	--	1,2,3
28	100%	245,000	5	$124,000	200,000-500,000	7,000-10,000	20,000+	655,000	$5,000,000	$30,000,000	1,4

[a]Subtract the percentage reported as receiver in column 1 from 100% to determine the percentage reported as shipper.

[b]1 = retail 2 = wholesale 3 = manufacturing 4 = agriculture

APPENDIX B

AN INFORMAL OPINION OF I.C.C. ON SHIPPERS' ASSOCIATIONS

AN INFORMAL OPINION OF I.C.C. ON SHIPPERS' ASSOCIATIONS*

Section 10562(3) of the Interstate Commerce Act exempts activites of shippers' associations from economic regulation. The Interstate Commerce Commission has held that the legislative history of section 10562(3) demonstrates a strong congressional policy that regulation should not encroach upon shippers nor restrict their right to join together to gain volume rates.

In determining permissible activities under the exemption in section 10562(3) of the Act, shippers' associations cannot hold out to the public to provide transportation for compensation. Associations would then be engaging in operations of a freight forwarder without holding appropriate authority from the Commission.

GUIDELINES BY THE COMMISSION

There is no absolute blueprint or check list prescribed as to what constitutes a bona fide shippers' association, but the Commission has made numerous statements regarding the subject in its investigations and rulings involving established shippers' associations. In past cases, the Commission has adopted the following yardstick in the determination of whether or not a shippers' organization is operated legally.

1. The association must serve its own members and only those members. It, in fact, must affirmatively stand aloof to the lure of a public calling.

2. The association must serve on a non-profit basis.

3. The association must be controlled by the members who assume the risk of business.

A true shippers' association is a legally exempt, unregulated organization, either incorporated or unincorporated, composed of shippers who are desirous of participating in mutual non-profit pool car or pool truck activities and securing for themselves the benefits of carload, truckload, and other volume rates.

Because the identity of the person or persons providing the service ultimately depends upon who it is that controls and directs, and bears the essential risks and burdens of the operations in issue, the basic question to be answered is:

> Are the freight consolidation and distribution operations such that any persons or person other than the shipper members of the association (1) have any right or ability to control, direct, or dominate such operations, or (2) bear the essential risks and burdens, financial and otherwise, of conducting the operations under consideration?

*Adopted from remarks of Robert S. Turkington, Assistant Director, Bureau of Enforcement, Interstate Commerce Commission before the American Institute for Shippers' Association, Inc. 5-21-74. He recently (Spring 1982) retired from his position as Associate Director, Office of Consumer Protection, Interstate Commerce Commission.

Both aspects of this question must be answered in the negative, if the considered operations are, in substance and reality, those of a bona fide group or association of shippers acting together or a non-profit basis to achieve the permissible purposes specified in the Act. Any affirmative answer to either part of this question necessarily would result in the conclusion that the purported members of the group or association are, in fact, purchasing transportation from a person or persons engaged in unlawful freight forwarding service. Thus, it is the status of the person or persons having the right, ability, or the power to control or actually controlling, the conduct of the freight consolidation and distribution operations, and who assume the essential risks and burdens thereof, which determines the validity of an exempt association. If any person or persons, other than the shipper-members themselves possess even the right or privilege to control, or in fact actually controls, the freight consolidation and distribution services, it is they, and not shippers, who through the purported association are performing such activities. In such event, the operation being conducted in the name of their group or association is not within the appropriate exemption, but is, in substance, a common carrier freight forwarding service for which authority is required. In these circumstances, the controlling persons will be regarded as having assumed the necessary responsibility for the transportation from the point of receipt to the point of destination within the meaning of the definition of a freight forwarder. The same conclusion clearly must obtain in those situations in which persons other than the shipper members of the association bear the essential risks and burdens of the consolidation and distribution operations in questions. Where, however, the shipper-members themselves, to the exclusion of all others, control, direct, and dominate the activities in question and assume all other risks and burdens of conducting such operations, the operations would be of a character specifically safeguarded by these exemptions.

CONTROL AND MANAGEMENT BY MEMBERS

Probably the most important aspect in the determination of the validity of a shippers' association is the nature of the control of the organization. The Commission is extremely interested in ascertaining whether an organization is legitimately organized by the shipper-members for the purposes of savings in transportation charges or is disguised as a shippers' association by some entrepreneur to escape the authority requirement of a legitimate freight forwarder.

The Commission has stated an operation is not bona fide if the shipper-members are able to exercise no more control than with regulated freight forwarders. This element of control has been ruled essential by the Commission in many cases. The Commission often has criticized, the fact that the shipper-members exercised no greater control than would have been the case had they hired the service of a regulated common carrier.

DELEGATION OF CONTROL TO AGENT

The Commission has also stated that a shippers' association shall not delegate all control and authority to an agent. The Commission has stated that where the members have delegated all responsibility to a purported agent or employee, they have invested the latter with the basic characteristics of an independent entrepreneur; and, as such, the operations of the purported agent or employee are subject to the licensing requirements of the Interstate Commerce Act.

The Commission has stated to conclude otherwise would enable a shipper or shippers' association by mere paper arrangements to confer upon another person, a license to operate as a for-hire freight forwarder and to receive in return a royalty for the use of its name and the exclusion to which it alone is entitled. Such an arrangement merely constitutes a device or a scheme to circumvent the provisions of the Act and will not be allowed.

ELEMENT OF RISK

Probably second only to the importance of management control is the question of risk of the shipper-members of a bona fide shippers' association. This element of risk is partially substantiated by the establishment of reasonable initiation fees and dues, but it should be noted that this is not the only area of risk to which the Commission has directed its attention. The fact of incorporation has been attacked by opponents of the shippers' associations on the basis of its elimination of this risk factor. The Commission, however, has ruled that incorporation does not invalidate an association's exempt status.

In elaborating on the issue of risk, the Commission has said that the major financial risk entailed in the conduct of association operations, other than such risks as are readily insurable, is the risk of loss, or to put in another way, the risk that the saving resulting from the association's use of applicable carload, truckload, or other volume rates, will be eaten up or more than offset by the association's operating expenses. And so long as this essential transportation burden is, in fact, borne ultimately by the members, rather than by someone else who exercises effective surveillance over the physical consolidation and distribution operations, it is clear that there has been compliance with the statutory scheme.

The Commission has never made a direct ruling as to a specific limitation of the number of members which a bona fide shippers' association may have. It is stated, however, that associations cannot seek unlimited membership size. See Ohio Valley Shippers' Association-Declaratory Order, 132 M.C.C. 584 (1981). Neither has the Commission taken any specific stand as to the size of initiation fees or membership dues. The Commission has, however, taken a general stand that a member of a shippers' association must assume some risk and this would prescribe that sufficient fees should be charged to constitute such a risk, in relation to the scope of operation anticipated, and to serve as a deterrent to membership being construed to be open to the general public for a token fee.

In Sunshine State Shippers and Receivers Association, Inc., 350 I.C.C. 391 (1975), the issue was raised whether or not a shippers' association can be a bona fide member of another claimed shippers' association. The Commission found that associations of shippers have no direct beneficial interest in the property they handle for their members, therefore, it is not itself a shipper. The association only acts on behalf of its members who are the beneficial owners of the property to be shipped.

In the context of the Elkins Act, the Commission is obliged to police the activities of shippers' associations claiming to act within the legal exemptions as stated. Even though an association is exempt from general economic regulation, it may nevertheless be subject to the provisions of the Elkins Act. An example of this was the settlement by the Commission of a civil forfeiture claim against a shippers' association for receiving and accepting concessions from common carriers in violation of the Elkins Act. The association paid $23,000 in forfeitures on May 10, 1974, for receiving concessions by means of falsifying weights on TOFC shipments originating at Philadelphia, Pennsylvania for movement to the West Coast.

APPENDIX C

A MANUAL TO INFORM SMALLER SHIPPERS OF THEIR RIGHTS AND DUTIES AS THEY SHIP OR RECEIVE FREIGHT AND A GLOSSARY OF IMPORTANT SHIPPING TERMS

This material is adapted (with full approval of the Federation) from a document prepared some years ago by American Retail Federation.

A MANUAL TO INFORM SMALLER SHIPPERS OF THEIR RIGHTS AND DUTIES AS THEY SHIP OR RECEIVE FREIGHT

All too often, retailers, engrossed in their primary duty - the sale of merchandise - neglect transportation service and costs. They assume that, because motor, rail, air, and water carriers are regulated by the Government, they can do nothing about the rates and charges. This overlooks not only the human errors that can be costly to the uninformed retailer but also the wide choice of transportation facilities open to the shipper, all with varying rates, minimum charges and service.

The first step to transportation savings is in the <u>maintenance of adequate records</u> by which the transportation service and cost can be determined. With but slight attention to transportation and receiving records, unnecessary losses in freight charges and damaged merchandise can be detected. With a little effort, many of these losses can be stopped. Remember that it may take over $30 in sales to make up for <u>$1 needlessly lost</u> in transportation or damaged merchandise.

These are general highlights pointing out what should be simple, common sense practices to save you money. If you have a specific problem, seek competent advice - it will pay dividends.

Another factor, even if you are satisfied with the ever-increasing cost for the movement of your goods, it is important to find some non-technical rules-of-thumb to be able to <u>make certain that you are getting what you are paying for</u>, since transportation service, like any commodity, varies in quality and cost.

I. <u>TERMS OF PURCHASE</u>

Someone must arrange to get the goods from the seller to your store. Who does this and why? This is included in the sales contract often in technical terms, so you should know what they mean.

1. Know and understand the agreement with the seller. (Seller may be called vendor, source, shipper, etc.)

    A. Who pays the freight charges?

        (1) Usually the buyer pays. Otherwise, it is in price of goods.

    B. Who is responsible for the transportation?

        (1) Usually the one who pays the freight charges.

    C. Terms can be anything agreed to by buyer and seller.

2. What does <u>F.O.B.</u> point mean?

    A. Place where seller delivers to carrier or consolidator.

    B. Title to goods normally changes at this point to buyer.

    C. Seller pays all transportation charges up to this point - buyer thereafter.

3. Transportation allowance should be specific.

   A. Represents any concession or allowance in transportation charges.

   B. Used either in normal pricing or special promotions by the vendor.

   C. Often a special inducement not directly affecting advertised or quoted price of the goods.

4. Example of some transportation terms and what they mean.

   A. F.O.B. Origin - Charges Collect - No Transportation Allowance

      (1) Seller delivers to any carriers or consolidator in city where located. Also, delivers to any store in the same city.

      (2) Buyer picks carrier and pays freight charges.

      (3) No allowance on invoice for freight charges.

      (4) Can be F.O.B. Chicago or any city and mean the same thing.

   B. F.O.B. Factory - Charges Collect - No Transportation Allowance

      (1) Seller makes available only at shipping platform of factory.

      (2) Buyer picks carrier and pays freight charges.

      (3) No allowance on invoice for freight charges.

      (4) Buyer pays for delivery to store in the same city or to any carrier not making free pickup.

      (5) Be sure you know where factory is. May be different from seller's office and may have more than one.

   C. F.O.B. Factory - Charges Collect - Transportation Allowance

      (1) Same as "B" described above except allowance made on invoice for transportation cost.

      (2) Normally only standard means and costs of transportation allowed.

      (3) May be expressed in terms of value or size of shipment. (Full on orders of 200 pounds, or over $100, or 1 gross, etc. - none on less.) If so, be sure to order in necessary amount, or buyer will assume transportation costs.

D. F.O.B. Destination - Charges Prepaid - No transportation Allowance

(1) Seller delivers to buyer without charge - transportation costs are in the price of the merchandise.

(2) Seller selects carrier and handles claims.

(3) Frequently limited to specified quantities or weights.

5. Familiarize yourself with these terms and actual agreement.

A. Avoid use of only Prepaid or Collect. These only mean who initially pays the freight charges.

B. Determine different ways vendor will sell. Pick best terms for you. The number of variations on the above examples are infinite.

C. Make sure purchase order states specific transportation terms agreed upon.

II. ROUTING

As in buying operation, the purchase of transportation service should reflect the best value. Routing the shipment is a direction as to that purchase.

1. If the purchase terms permit, buyer should pick best type of transportation. This depends on different factors, such as:

A. Average size and weight of shipments.

B. The shipping and receiving points.

C. Transit time that can be allowed.

D. Difference in freight costs among the various modes.

2. When selecting a routing:

A. Ask seller for recommendations. His experience may be helpful.

B. Find good local carriers and ask them for recommendations.

C. Check with fellow retailers. Sometimes joint action means expedited service.

D. Pick routing best for you.

3. Tell the seller how <u>you</u> want it shipped.

   A. Frequent shipments from one seller show a need for regular instructions. Infrequent orders may be shown on individual orders.

   B. Be flexible. For large initial orders, take a slower, cheaper method. For re-orders on out-of-stock items or repair costs, costlier routing may be justified.

   C. Try to use <u>few</u> carriers. Cheaper and better for everyone with fewer and larger deliveries. Expensive to have many carriers delivering small individual shipments.

4. Follow-up on routing instructions.

   A. Make sure seller is following <u>your</u> instructions.

   B. See that carriers give you that promised service. In checking transit time, find the difference between:

      (1) The receipted date on the shippers' bill of lading. (The billing date on this or on the invoice may be predated.)

      (2) The time shipment is actually delivered. (The freight bill may show only the time it was typed.)

   C. Make a periodical review of the carrier's claim handlings. Difficulty in securing prompt settlement of valid claims can offset much of the transportation savings anticipated through careful control of routings.

   D. If service is poor, notify the carrier involved (with details). If service does not improve, change your routing.

5. Cooperate with other merchants. Concentrating shipments to a few carriers will improve service.

   A. Sometimes several retail merchants can get routing charts from principle cities at low cost. Work through your local merchants' association.

   B. Cost may be offset by saving in transportation expense.

III. <u>RECEIVING THE SHIPMENT</u>

Some experts believe retailers lose more money through poor receiving practices than in any other transportation function. Don't treat it with casual annoyance, and follow these rules:

1. Carrier requires your receipt for merchandise delivered. (Not necessary in parcel post.)

A. Receipt all copies of the Freight Bill presented at time of delivery. The Freight Bill may consist of a number of copies called original, delivery receipt, memo, etc.

B. Have the driver make, date and sign a clear notation verifying any shortage, damage or other discrepancy apparent at time of delivery on all copies of the Freight Bill on which the shipment is receipted for.

2. Unless you have credit arrangements with the carrier, you must also pay freight charges on delivery.

A. Be sure you pay only the "Original Freight Bill" copy - (or consignee freight bill).

B. Get signed receipt for payment of charges.

3. Do not receipt for merchandise not delivered to you. Guard against the following costly mistakes:

A. Shipments not delivered. Even if driver says they are on the truck and will be brought in, wait until entire shipment is in store before you sign for the shipment.

B. Different shipments delivered. Shipments get confused and some pieces may belong to others or to a different shipment. Check shipping numbers, case numbers, and all information on the freight bill. Don't receive a carton of work pants and give a mink coat receipt.

C. No "Bad Order" exception on the freight bill. The driver's signed notation is evidence that the shipment was in apparent bad order when delivered to you.

(1) Be exact as possible and notice even holes and punctures. They may be signs of pilferage. Watch for type of gummed or sealing tape.

(2) Use of carbon paper in writing notations on freight bill desirable so all copies have the same comments.

(3) It may be practical to perform an immediate joint inspection with the carrier at time of delivery to verify the quantity and condition of a "bad-order" carton.

(4) Remember - the time spent may save a big, unprovable loss later.

D. No records of shipments received. Even a small record book may be enough, but keep daily records of seller, carrier, freight bill number, number of cartons received, identifying marks, and other pertinent information. Do the same for parcel post and express shipments.

4. Set up a system to review damaged, over, or short shipments.

   A. This is a double check to make certain claims are filed for any loss or damage.

   B. This helps to straighten out Free Ashtrays (shipments short and delivered later with charges already paid) or Weight and Charges to Follow (where carrier does not have charges and bills you later).

5. Don't delay the driver. Undue and habitual delay may lead him to hold up deliveries until he gets a large amount. Result: slower service. On the other hand, don't lose sight of the need to prove a claim - take the time to look at what you are signing for.

IV. LOSS AND DAMAGE CLAIMS

When a carrier loses or damages your shipments, he has, in effect, bought the merchandise. How do you make sure you get paid for it?

1. Under the bill of lading terms, a common carrier should deliver merchandise in same condition as received. He must pay for the full actual loss, damage, or injury caused by him while the merchandise is in his possession.

   A. One exception is Act of God, where shipment is destroyed by unpreventable catastrophe.

   B. Another exception is where the loss or damage was caused by an act or default of the shipper (such as poor or insufficient packing).

   C. Important exception is tariff limitation on liability. Examples:

2. How to file a claim. See claim form attached. Show all information possible as this may speed settlement. Remember, if terms are F.O.B. Destination, Freight Charges Prepaid, the seller should handle the claim in most cases. Things to watch are:

   A. Loss claims should be filed after carrier has time and opportunity to trace for the shipment. Notify local carrier after reasonable time for shipment to have been received (should show on seller's invoice and bill of lading). This can be done by telephone. Do it on both loss of entire shipment and partial loss of shipment.

      (1) Make allowance for delays such as pre-Christmas rush, strikes, or bad weather.

      (2) Give the carrier a reasonable time for tracing to find and deliver shipment. Then file claim. Claims should be filed promptly and in any event must be in the carrier's possession within nine months after loss.

B. Damage claims for both apparent and concealed damage should have an inspection report made out by the carrier. ("Concealed" is damage discovered when the carton or package is opened after delivery.)
Note: An "Open" notation of the freight bill (such as "carton smashed," etc.), does not eliminate the need for a carrier inspection.

(1) Call the carrier to send an inspector. Save the merchandise, the outer carton, and all inner packing for he will inspect all of these. Notification should be made within 15 days from date of delivery. If no inspection is made within a few days, send the notice in writing and keep a copy.

(2) You will be asked to sign the inspection report. Be certain to read it carefully and don't sign it if you disagree with any of the remarks. Remember, this document may be the basis for claim settlement.

(3) If you intend to store the cartons, be sure to open and inspect them for concealed pilferage and damage in sufficient time to advise the carrier within 15 days from date of delivery as specified in claim rules and regulations.

C. Damaged Merchandise (whether obvious or concealed) is called salvage if it still has some marketable value. The carrier is entitled to offset the fair market value of the salvage against the damage claim.

(1) In most cases, the receiver is obligated to dispose of the goods in order to minimize the claim, but it may be better to let the carrier do it if he is willing.

(2) Make sure that the salvage can be disposed of by sale. Some merchandise must be destroyed. If seller retains trademark rights, check sales contract or advise seller of damage.

(3) Loss or damage claim should cover the entire loss, including freight charges. Remember, if you have damaged merchandise repaired or refinished; you are entitled to recover this cost even if you do the work yourself. Carriers are generally not liable for delays in transit except in special instances causing loss of market, or damage due to the unusual delay.

4. Collection of loss and damage claims should be no problem if proper documents are used. In addition to claim itself, you should have the original bill, and the invoice for the goods. You should include other pertinent papers such as tracing requests or information, the inspection report, and even correspondence. These should be photostatic copies or else keep copies and a record of having sent them to the carrier.

A. Carrier should give you a receipt for the claim. Usually this also has a claim number to be referred to in later correspondence.

B. The carrier should give you information or payment on the claim within two months. (If it has been filed late, this time will probably be longer.) Check with carrier at this time.

C. If you do not get prompt or satisfactory claim settlements, check with other merchants or write the head official of the carrier. If this does not produce results, write the Interstate Commerce Commission.

V. AUDITING - OVERCHARGE CLAIMS

Carriers accounting methods are complex and detailed; yet, each day they must present detailed bills on thousands of individual shipments they have delivered. You can often make sure that they have not overcharged you.

1. Freight bills should be checked. If you have credit arrangements with the carrier, this can be done before payment. Otherwise, check later and ask for a refund. Carrier should do this too and may send a balance due for underpayment.

2. Without technical rate information, you can check for these errors.

   A. Wrong extension of weight times the rate.

   B. Incorrect addition of these charges.

   C. Duplicate billing with total charges collected on previous shipment (if you keep records).

3. With a little experience in knowing normal freight charges, you can check for additional errors.

   A. Shipment billed Collect instead of Prepaid.

   B. Shipment shows the wrong minimum charge.

   C. Shipment shows the wrong rate.

4. If you have to file an overcharge claim, ask the carrier for the proper form and method of filing. Remember, three years is usually allowed for such a claim, and you need only the original paid freight bill to support the claim.

5. Freight audit bureaus may agree to check your freight bills. This is a separate, independent organization and they may keep as a fee either 40, 50, or 60% of the amount collected in overcharges. Select a reputable one and they will help you in routing, selection of carriers, or description of merchandise as well as save you money.

VI. AUDITING - INVOICE AND ORDER

Many transportation errors or overcharges can be discovered from the information on other documents relating to the shipment.

1. Freight bills should also be checked against the original order and the seller's invoice. Seller's invoice should attach receipted bill of lading.

   A. You may be able to charge the seller (depending on the terms of purchase) for:

      (1) Insufficient transportation allowance on the invoice.

      (2) Use of different carrier or method causing higher freight charges.

      (3) Failure to ship all at one time causing several minimum charges.

   B. You may also find a reason to recover excess charges from the carrier. Examples:

      (1) Failure to follow routing instructions causing higher rate (complicated).

      (2) Different description of merchandise. (Be sure that this is not due to tariff requirements rather than just an error.)

VII. RETURNS TO VENDOR

Don't keep and try to sell merchandise that you didn't order just because it is too much trouble to return it. Some things may make this easier.

1. Inspect shipment as soon as possible after received to make sure order was correctly filled by seller. (Also for concealed transportation damage.)

   A. Do not destroy the shipping container as you may want it to return the shipment to the seller. Also, the carton may be marked to show contents.

   B. Packing slips may be enclosed to show contents.

2. If shipment has to be returned to seller, general rule is to repack in same manner and return by the same carrier. If you are not familiar with making out a bill of lading, ask carrier for help. Notify seller of difficulty, and send a copy of bill of lading to him.

3. Be sure inner packing is adequate to protect the merchandise during transit.

4. Be sure the carton is properly sealed.

5. Obliterate all old markings and label clearly to expedite correct delivery.

6. Be sure to insure for full value. This protects you against counter-claim by vendor if he contends he did not receive the return shipment.

7. If vendor invoiced you for merchandise - charge him for amount of merchandise returned plus any inbound or outbound transportation charges you may have paid.

VIII. MISCELLANEOUS

1. Insurance on shipments. This may be in two ways - general underwriters cargo insurance covering all losses on shipment, or paying a higher rate on each shipment.

   A. General cargo insurance should be used only if the transportation losses uncollectible from carriers is greater than premium.

   B. Higher charges or rates can be paid on individual shipments in some cases to get greater liability.

2. Minimum charges. Almost all carriers have minimum charges to cover the cost of handling a single shipment. Most retailers pay minimum charges on a third of their shipments. This can double your freight bill.

   A. This can sometimes be corrected by changes in ordering procedure so that more merchandise can be shipped without additional transportation charge.

   B. Ordering more lines or items from a single seller may result in more economical shipments if orders are cross referenced with advice to ship together.

3. Packaging. Watch the container and method of packing. Remember, you pay charges on the total weight of the goods and the container.

   A. Let seller know if container is not adequate to prevent damage.

   B. See if shipment could have been split into two shipments by parcel post for cheaper transportation.

   C. Tell the seller if you think the container or packing he is using is too heavy or too expensive for the merchandise.

4. Transportation Ratio. This is the percentage the transportation cost bears to the cost of the merchandise. You should mark your order, invoice, or other record with the transportation cost.

A. It will give you your landed cost and show relative cost of initial orders and re-orders.

B. It is necessary to determine your mark-up and gross profit by item.

APPENDIX C

GLOSSARY

Bill of Lading	A document executed by the carrier specifying the nature of the shipment and the contract terms and conditions under which the transportation will be performed.
Carload (CL)	Railroad terminology for a shipment sufficient in size and weight to meet the requirements for movement in a freight car.
Carrier	A person or company engaged in the business of providing transportation service.
Case Number	A serial or identifying number and/or letters stamped or marked on cartons, crates, cases or other containers to provide a distinguishing mark for transportation or other purposes.
Collect	Transportation charges are to be paid by the receiver of the shipment. This is the normal term and distinguishes from Prepaid.
Consolidator	A service maintained in larger cities whereby smaller shipments from various vendors are received, consolidated and shipped out at volume or quantity rates. Usually a package or piece charge is billed for this service.
Distributor	Same as consolidator, except at destination end of a line-haul. The distributor unloads, sorts and arranges for the distribution of numerous separate consignments received in volume truck or carload shipments.
Dryage	Usually the transportation or hauling of goods within a city or commercial.
Express	A special and more costly system for transportation of goods, parcels, or money.
F.O.B.	Free on Board. Delivered free of charge on the means of transportation such as train or vessel.
Free Astray	Shipments found without proper billing and delivered by carrier according to the markings but without collection of charges.
Freight Bill	A document prepared by the carrier showing the transportation service performed and the weight, rates, and charges to be collected.

Freight Forwarder	A transportation agency or function using one or more types of carriers to provide a complete service and responsibility for the through movement of less-carload or small shipment.
Garment Carrier	Any carrier (usually truck) undertaking to provide transportation of garments or articles of clothing without any packaging or container and using only racks or hangers.
I.C.C.	Interstate Commerce Commission, an independent Federal agency regulating the rates, charges, and practices of interstate carriers such as railroads, trucks, forwarders, express, and water carriers.
Landed Cost	The total expense of receiving goods or merchandise at the place of retail sale including the purchase price and transportation charges.
Less Carload (LCL)	Railroad terminology for shipments less than carload sizes and weights and which are handled in a different manner, usually at higher rates and charges.
Less Truckload (LTL)	Motor carrier equivalent to the railroad term of less-carload applicable to truck size and weights.
Minimum	The least requirement for a shipment whether expressed in the rate, charge, or weight.
Over Shipment	A piece of freight found in addition to the stipulated parts of a shipment and which generally cannot be identified from the documents on hand.
Packing Slip	An identifying listing or tabulation of articles by size, color, style, quantity, or other specification placed in a container indicating goods that should have been placed therein.
Pilferage	A relatively petty larceny or theft of goods, usually a removal of a portion of merchandise within a container.
Pool Car Operator	A pool car operation may be for/hire not subject to regulation, subject to regulation or an exempt shipper association activity. A pool-car operator who consolidates freight for a single shipper or receiver for profit and forwards this freight to a destination point, where the shipper or receiver takes possession, is actually acting as a shipper's agent. He may, of course, serve several single shippers in the same way and/or several shippers' associations.

	A pool-car operation which consolidates freight for one or more shippers, controls the line-haul movement and makes whatever arrangements are necessary for distribution for profit, would be subject to regulation.
Prepaid	Transportation charges to be paid to the carrier by the shipper. To be compared with Collect.
Pro Number	Any progressive or serial number applied for identification to freight bills, bills of lading, and the like.
Route	The manner or method by which a shipment is to be transported. This can refer to type of carrier, such as rail, or to a specific carrier, such as Pennsylvania Railroad, or to any combination of carrier sneeded for the through service.
Route Chart	A predetermined selection of routes to be used in making various types of shipments to indicated destinations as they may occur.
Salvage	Remaining goods or merchandise after suffering partial damage. Also used for proceeds from sale or marketable value for such goods.
Shipment	Goods or merchandise in one or more containers, pieces, or parcels for transportation service from one shipper to a single destination.
Shipper's Agent	A shipper's agent is a person or company who is in the business of consolidating or distributing property and whose services and responsibilities to shippers in connection with the consolidation or distribution of property are confined to the terminal area in which such operations are performed.
Shipping Number	A serial number applied to documents or shipments for identifying purposes.
Short Shipment	A piece of freight missing from the stipulated parts of a shipment called for by the documents on hand.
Tariff	A schedule or system of rates or charges for the imposition of transportation charges by the carrier and which is usually required to be posted in freight houses and with the I.C.C.
Trace (Tracer)	The act or means of obtaining information as to each step occurring in the through movement of a shipment over a route of one or more carriers.
Transit	Movement through or over, by means of a carrier.

Transit Time	The length of time required for carriers to deliver a shipment.
Truckload (TL)	Motor carrier equivalent to the railroad term of carload but applicable to truck size and weight.
Warehouseman	Insofar as shippers' associations are concerned, a warehouseman is a shipper's agent when he consolidates or distributes freight under a contract or agreement.

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