

THE EFFECT OF THE AGRICULTURAL EXEMPTION ON
REGULATED COMMON MOTOR CARRIERS

by

M. Dale Harrington

A THESIS

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Committee

Approved:

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Dean of the College

THE EFFECT OF THE AGRICULTURAL EXEMPTION ON
REGULATED COMMON MOTOR CARRIERS

A THESIS

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M. Dale Harrington

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Purpose

The purpose of this study is to inform the reader of the problem which has and still does exist in our transportation system. Special consideration is given to (1) the expansion of the exemption, (2) the commodities carried by exempt carriers, (3) the operations of exempt carriers, and (4) the effect exempt carriers have had on the business of our regulated common motor carriers.

Methods

The methods used to obtain data for this study were (1) intensive library work, (2) writing to government bodies such as the Interstate Commerce Commission and the Department of Agriculture, and (3) writing to trucking and farm organizations for information.

Findings

From the evidence presented in this study, the following findings appear in order:

1. The intent of Congress was to provide the farmer and rancher with a low cost, highly flexible form of transportation.

2. The agricultural exemption has been expanded beyond the intent of Congress through legislative changes and liberal court interpretations.

3. Grain represents the largest tonnage of any commodity hauled by exempt carriers, and vegetables represent the largest number of hauls.

4. It is unlikely that many large firms will develop in the exempt carrier industry.

5. Trip-leasing is the most common violation by an exempt carrier.

6. Exempt carriers represent the greatest safety hazard on the American highway.


7. The agricultural exemption has caused an increase in private carriage.

8. Increases in private carriage and illegal trucking operations has caused the regulated motor carriers to lose large volumes of traffic and freight revenue.

9. Loss in traffic and freight revenue has forced some regulated motor carriers out of business and caused others to increase their rates. The increase in rates has caused an increase in private carriage.

10. The end result of increases in private carriage and illegal trucking has been a weakening of our national transportation system.

Approved:



Supervising Professor

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CHAPTER I

INTRODUCTION

The agricultural exemption and the carriers that operate thereunder represent one of the most controversial problems in transportation today. In discussing this exemption one will find very few "middle-of-the-roads." Most people and/or groups are either completely for the exemption in its present form or violently opposed to it. Those who oppose the exemption consist primarily of the regulated motor carrier interest. Those who favor the exemption are primarily the farming interest. This is considered natural.

The regulated trucking interest did not oppose the exemption in its original form, but they do oppose it in its present, highly expanded, form. Due to the expansion of the exemption, the regulated truckers have lost large volumes of traffice and revenue.

The ironic note is that the farm groups still strongly favor the exemption in its present form, yet they have benefited very little from the expansion of the exemption. The only groups that have really benefited from the expansion have been the middlemen, processors and manufacturers.

STATEMENT OF PROBLEM

The objective of this paper is to analyze the effect the agricultural exemption has had on regulated common motor

carriers. In order to achieve this objective, we will (1) look at the expansion of the exemption through legislative changes and liberal court interpretations, (2) analyze the type of commodities carried and the method of operation of carriers which operate under the exemption, and (3) check the volume of loss in both traffic and revenue that has occurred to the regulated motor carriers as a result of the agricultural exemption and look at the attempts of the industry to prevent such further losses.

PURPOSE OF STUDY

The purpose of this study is to inform the reader of the problem which has and still does exist in our transportation system. When Congress passed the agricultural exemption, it was their intent to help the farmer by providing him with a low cost and highly flexible form of transportation. Since its passage, the exemption has been expanded greatly.

As a result of the expansion of Section 203 (b) (6), large volumes of traffic have been diverted away from the regulated motor carriers who serve the general public on a nondiscriminatory basis. The result of the loss of traffic has been decrease in revenue and profits. In some cases, regulated motor carriers have been put out of business because the loss of traffic was too great. In other cases, the

regulated carriers have had to raise their rates; and thus we, the public, lost by having to pay higher prices for the transportation of all commodities moved by regulated carriers. In every case, the expansion of the agricultural exemption has tended to weaken our national transportation system.

It is also the purpose of this paper to inform the reader of the grave safety problem on our highways created by those carriers which operate under the agricultural exemption.

DEFINITIONS OF TERMS

In this section, the first definition of each term will be its proper definition. If there is any deviation from the proper definition of a term, then a second definition will be given which defines the term as it will be used in the following pages.

Economic regulation. Economic regulation refers to regulation imposed by the Interstate Commerce Commission on the business activity of certain motor carriers. These regulations cover such areas as routes traveled, rates charged, cargo carried, insurance, system of accounts, consolidations, mergers, etc.

Regulated carrier. Although all carriers which move in interstate commerce are subject to the safety regulations

imposed by the Interstate Commerce Commission, the term regulated carrier usually refers to either common or contract motor carriers. In the following pages the term regulated carrier will refer only to common motor carriers.

Common motor carriers. Common motor carriers must obtain a "certificate of public convenience and necessity" from the Interstate Commerce Commission. In order for a carrier to obtain a certificate, he must prove that he is fit, willing, and able to perform the transportation service and that the service is needed by the public. Each common carrier holds himself out to serve the general public on a nondiscriminatory basis.

Private carrier. The term private carrier means a not-for-hire carrier. By not-for-hire carrier is meant those carriers transporting goods for their own use or as an incident to their business or occupation. Private carriers are not subject to economic regulation by the Interstate Commerce Commission.

Exempt carrier. An exempt carrier is any motor carrier that is exempt from economic regulation by the Interstate Commerce Commission. There are many such carriers as will be pointed out in the last section of this chapter. The term

exempt carrier, as it applies in this paper, refers only to motor carriers which carry exempt agricultural products.

Back-haul. Back-haul means the same as a return haul.

Dead-head. The term dead-head means that a truck has or will return empty.

TYPES OF EXEMPT MOTOR CARRIERS

Since this paper is concerned with only one of the many types of motor carriers that are exempt from economic regulation, it is felt that the reader should become acquainted with the various types of exempt motor carriers.

In order to give the reader the full scope of the economic exemptions provided under Section 203 (b), Part II of the Interstate Commerce Act, each class of exempt carrier will be mentioned briefly. Vehicles which are exempt from economic regulation are:

1. Motor vehicles used in transporting children to and from school.
2. Taxicabs performing a bona fide taxicab service and which have a seating capacity of not more than six passengers. The vehicle cannot be operated on a regular route or between fixed termini.
3. Motor vehicles owned or operated by hotels and used exclusively for transporting hotel patrons between hotels and common carrier stations.

4. Motor vehicles used in transporting passengers in and about national parks and monuments.

5. Motor vehicles controlled and operated by cooperative association.

6. Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural or horticultural commodities (not including manufactured products thereof), . . .

7. Motor vehicles used exclusively in the distribution of newspapers.

7a. Transportation of persons or property that is incidental to transportation by aircraft.

8. Transportation of property which is wholly within a municipality and its commercial zone when such transportation is not under a common control.

9. Casual, occasional, or reciprocal transportation of property or passengers for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.¹

¹Interstate Commerce Commission, Motor Carrier Information Bulletin, General Information No. 3 (Washington: Government Printing Office, 1959), pp. 2-3.

CHAPTER II

LEGISLATIVE HISTORY

Prior to 1925 individual states exercised a degree of control over interstate carriers operating in their state. The insufficiency of this control led to the demand for federal legislation. This is pointed out by the following statement:

Increasingly intensive competition between motor carriers and rail carriers, more than any other single factor, was responsible for the enactment of the Motor Carrier Act.¹

The element which led to this increased competition was the expansion of the motor carrier industry between 1930 and 1932. Competition became so intense during the depression that rate wars, extensive evasion of state regulation, and widespread destructive practices of various kinds resulted.

The whole structure of the industry was weakened. Business mortality was high. Highway accidents had become a national rather than a local problem.²

Railroads supported the legislation because they were of the belief that it would benefit them. The motor carrier

¹William J. Hudson and James A. Constantin, Motor Transportation (New York: The Ronald Press Company, 1958), p. 475.

²Ibid.

industry was somewhat divided but the older and better-established firms in the industry tended to support the legislation.

Opposition came mostly from outside the motor carrier industry. One group which actively opposed legislation consisted of the farm interest as is clearly evidenced by the following statement:

Opposition . . . came particularly from farm organizations, which feared that regulation would hamper and restrict trucking operators³

The farm group feared that if trucking operations were restricted, it would result in higher transportation cost to the farmer and tend to restore a railroad monopoly in the transportation of agricultural products.

MOTOR CARRIER ACT OF 1935

Senate Bill Number 1629 was introduced in the Senate in 1935. This bill was written by Joseph B. Eastman, then the Coordinator of Transportation. As first written, the bill did not mention any exemption from economic regulation of products raised or produced by farmers. The proposed bill did not last long in this form.

While the bill was being discussed, a group composed primarily of the farming interest, drafted a list of reasons

³D. Philip Lockin, Economics of Transportation (Homewood, Illinois: Richard D. Irwin, Inc., 1960), p. 667.

why they were opposed to the Eastman bill. These reasons were centered around the fears that the farmers' cost of transportation would increase and that the flexibility of highway transportation would be impaired, thereby placing an extreme hardship on farmers and other producers of life's necessities. It was explained to the farm group that their casual or reciprocal transportation would be exempt under the bill as follows:

the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.⁴

Throughout the entire Senate discussion of the Eastman bill, the only mention of any exemption from economic regulation came in the above explanation of the bill to the farm group and not in the bill itself.

The bill passed the Senate in the above form and went on to the House. The House Committee on Interstate and Foreign Commerce added to the bill Section 203 (b) 8. This section created the first exemption from economic regulation

⁴Celia Sperling, The Agricultural Exemption in Interstate Trucking--A Legislative and Judicial History, Marketing Research Division, United States Department of Agriculture, Marketing Research Report No. 188 (Washington: Government Printing Office, 1957), p. 2.

as follows: "(8) motor vehicles used exclusively in carrying livestock or unprocessed by agricultural products."⁵

While in the House, the bill met with a full-scale debate. The following discussion should give us some insight into the intention of Congress when they first drafted the agricultural exemption.

Representative Gillette asked Representative Holmes:

What was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively? Why not regulate that? What was the object of the exemption?

Representative Holmes replied:

The object (of the exemption) was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm. As an individual owner he should be exempt anyway and would not come under the provision of the bill.⁶

In explaining the purpose for requiring a carrier to haul livestock or agricultural products exclusively in order to be classed as an exempt carrier, Mr. Holmes said:

The purpose of the exemption is that a man who may take a bag of beans or a bushel of potatoes or any other unprocessed agricultural commodity and put it on his truck cannot get exemption from regulation and then go into the general trucking business in competition

⁵Ibid., p. 4.

⁶Ibid., pp. 4-5.

with his neighbor who has a legitimate permit to operate as a contract carrier.⁷

Representative Jones offered an amendment to exempt motor vehicles contracted and operated by farmers' cooperative associations. This amendment was accepted with little discussion.

There developed among several members of the House a growing concern regarding the extent of exemption afforded agricultural commodities which might be considered in some degree processed. In order to eliminate this concern, Representative Pettengill submitted an amendment striking the words "unprocessed agricultural products" and substituting the words, "agricultural commodities (not including manufactured products thereof)."

The following discussion relating to Representative Pettengill's proposed amendment should also give an insight into the intention of Congress relating to the proposed scope of the agricultural exemption.

Mr. Pettengill:

Mr. Chairman, we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent of the committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.

⁷Ibid., p. 5.

Mr. Whittington:

In other words, under the amendment to the committee amendment, cotton in bales and cottonseed transported from the ginneries to the market or to a public warehouse would be exempt, whereas they might not be exempt if the language remained, because ginning is sometimes synonymous with processing.

Mr. Pettengill:

That is correct.⁸

Representative Bland offered an amendment to broaden the exemption to include "fish including shellfish." This was accepted without discussion.

The bill was passed by the House and sent back to the Senate in the following form:

Sec. 203

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * *

(4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or

(4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or * * *

⁸Ibid., p. 6.

(6) motor vehicles used exclusively in carrying livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof);⁹

The bill was approved by the Senate and became law on August 9, 1935. It was designated the Motor Carrier Act of 1935 and became Part II of the Interstate Commerce Act.

ACTION FROM 1935 TO 1956

Since the passage of the above Motor Carrier Act of 1935, there have been many attempts to change the wording and thereby the interpretation of Section 203 (b) as it relates to the agricultural exemption. Prior to 1958, a general rule had been followed that any amendments which tended to liberalize the agricultural exemption usually met with success, while those amendments which attempted to restrict the exemption in any form seemed to fail. This is supported by the following statement.

On the whole, the amendments enacted before the Transportation Act of 1958 were intended to broaden the exemption, by comparison with the original phrasing or an ICC interpretation.¹⁰

⁹Ibid., p. 7.

¹⁰Clem C. Lannenbergh, "The Agricultural Exemption In Inter-State Trucking: Mend Them or End Them?," Law and Contemporary Problems, XXV (Winter, 1960), p. 150.

According to the wording of Section 203 (b) (6) of the 1935 Act, any vehicle that is used at any time to transport anything other than commodities which come within the agricultural exemption is barred from that day forward from the benefit of the agricultural exemption. This became known as the "poisoned vehicle" doctrine. On June 29, 1938, a bill became law which attempted to lessen the effect of this "poisoned vehicle" doctrine. The wording and the changes in Section 203 (b) (6)¹¹ are as follows:

(6) motor vehicles used [exclusively] in carrying property consisting of livestock, fish (including shellfish) or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation;¹²

The wording of the above made the commodity being carried, rather than the vehicle, the determining factor in the application of the exemption.

During May of 1939, another amendment was proposed. It read as follows:

(6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish) or agricultural commodities (not including manufactured products thereof) from

¹¹Those words underlined were added, those in brackets were deleted.

¹²Sperling, op. cit., p. 8.

the point of production to the point of primary market, processing, manufacture or transshipment, if such motor vehicles are not used in interstate or foreign commerce in carrying any other property or passengers for compensation.¹³

According to this proposed amendment, the exemption would have been limited to the first movement of goods from the farm to the primary market. This would have seriously restricted the agricultural exemption and therefore it was not acted upon.

Also during January of 1940, another amendment was proposed which would have restricted the agricultural exemption to the first movement of commodities. The wording of the proposed amendment is as follows:

(6) the transportation of property consisting of ordinary livestock (including poultry), whole fresh fish (including shellfish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment. The point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, and the point of production for livestock or agricultural products shall include the point at which they are gathered for initial shipment to the point of first sale, manufacture, or transshipment. The point of first sale shall not be deemed to include the point of production.¹⁴

As with the case of the May, 1939, amendment, this was not acted upon.

¹³Ibid.

¹⁴Ibid., p. 9.

On September 18, 1940, a bill was passed which did somewhat amend subsection (6) of the agricultural exemption. It reads as follows: "(6) motor vehicles used in carrying property consisting of ordinary livestock,* * *"¹⁵ The only change in subsection (6) was to insert the word "ordinary".

On May 28, 1943, another amendment to Section 203 (b) (6) was presented in Congress. It read as follows:

(6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof), by the producers of such property or by private carriers of property by motor vehicle, if such /motor/ vehicles are not used in carrying such property or any other property, or passengers for compensation.¹⁶

According to the wording of the above proposed amendment, all commercial transportation would have been removed from the agricultural exemption. This proposal would have completely nullified Section 203 (b) (6), but it was never acted upon.

During March of 1950, another amendment was proposed which would have given a strict interpretation to the term "agricultural commodities (not including manufactured products thereof)." As before, it seemed to be the intent of Congress not to restrict the scope of the exemption, and this proposal was never voted on.

¹⁵Ibid.

¹⁶Ibid., p. 10.

January 10, 1952, was the date of a proposed amendment which would have eliminated trip-leasing of farmer owned vehicles. (Trip-leasing will be discussed in detail in Chapter V of this paper.) This proposal also would have limited, by definition, the agricultural products which could be carried, thereby placing a severe restriction on the agricultural exemption. The proposed amendment was worded to read as follows:

(4a) motor vehicles controlled and operated by any farmer (i) transporting supplies to his farm, or (ii) transporting ordinary livestock as defined in Section 20 (11) of this Act, or agricultural commodities (not including livestock or commodities which have been processed to a greater extent than is customarily done by farmers) prior to their marketing by the farmers raising or producing such livestock or commodities, if such motor vehicles are not used at the same time or on the return trip or customarily in any other kind of transportation for compensation; or * * *

(6) motor vehicles transporting unprocessed fish (including shellfish) to market for the fisherman catching such fish, if such motor vehicles are not used at the same time or on the return trip or customarily in any other kind of transportation for compensation; or * * *¹⁷

The above proposal was rewritten twice. The second revision left subsection (4a) unchanged and attempted to change just subsection (6). This revision was an attempt to accomplish the objectives embodied in the proposals of 1939 and 1940. This mainly had to do with limiting the

¹⁷Ibid., p. 11.

agricultural exemption to the first movement of goods from the farm and the first movement of fish off the wharf. Again it seemed to be the opinion of Congress that no legislation should pass which would restrict the agricultural exemption in any form. This proposal did succeed in including subsections (4a) and (6) the words "including horticultural" after the word "agricultural."

ACTION OF THE 85TH CONGRESS

In 1956, the Interstate Commerce Commission recommended in its 70th Annual Report, that the scope of the exemption be restricted to the first movement from the point of production to the primary market. Senator Magnuson, Chairman of the Senate Committee on Interstate and Foreign Commerce and Representative Harris, Chairman of the corresponding committee in the House of Representatives, introduced identical bills embodying the above proposal in the spring of 1957. The bills S. 1689 and H.R. 5823 would have changed Section 203 (b) (6) to read as follows:

(6) motor vehicles used in carrying property consisting of ordinary livestock, live poultry, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof or frozen foods) from the point of production to a point where such commodities first pass out of the actual possession and control of the producer, if such motor vehicles are not at the same time used in carrying any other property, or passengers,

for compensation. For the purpose of this paragraph the point of production for fish shall be deemed to be the wharf or other landing place at which the fisherman debarks his catch, and the point of production for agricultural commodities shall be the point at which grown, raised or produced, or the point at which the fish or agricultural commodities are gathered for shipment.¹⁸

There was no Senate hearing on S. 1689, but the House Committee did hold a hearing of H.R. 5832 but no further action was taken. Since no action was taken on these bills, they remained alive throughout 1957 and 1958, but died when the new Congress began January 1, 1959.

In July of 1957, Senator Smathers introduced S. 2553 which would amend Section 203 (b) (6) to read as follows:

(6) motor vehicles used in carrying property (when such property is not transported in the same vehicle with any other property, or passengers, for compensation) consisting of (a) fish (including shellfish); (b) ordinary livestock, as defined in Section 20 (11) of this Act; (c) leaf tobacco (not including redried tobacco); (d) nuts (not including shelled peanuts); (e) live poultry and raw eggs in the shell (not including frozen eggs); (f) domestic wool and mohair (not including cleaned or scoured wool or mohair); (g) fresh pasteurized, fortified, standardized or homogenized milk, cream, skimmed milk buttermilk or whey (including concentrated or condensed products thereof when shipped in milk shipping cans not hermetically sealed, or in bulk in

¹⁸Celia Sperling, The Agricultural Exemption in Interstate Trucking: Developments in 1957-1958, Marketing Research Division, United States Department of Agriculture, Marketing Research Report No. 352 (Washington: Government Printing Office, 1959), pp. 5-6.

tanks, but not including canned, churned, dried or powdered milk, cream, skimmed milk, buttermilk or whey or other manufactured products thereof); or (h) other agricultural or horticultural commodities (not including manufactured, cooked, canned, frozen, powdered, dehydrated, evaporated, condensed, concentrated, milled or pearled commodities or products thereof, or chilled juices or fruit salad).¹⁹

The wording of this bill excluded many commodities from the benefit of agricultural exemption which previously had been ruled to be exempt by the courts.

Because of the exclusion of these commodities from the exemption, it would have been illegal for the truckers who previously carried these commodities to haul them without a certificate from the ICC. To circumvent this problem, the bill provided for the extension of "grandfather rights" to truckers who were engaged in carrying the restricted commodities on September 1, 1956.

Grandfather rights are a grant of special rights to a carrier if its, or its predecessor, on a specified date in the past, was rendering a transportation service which is now about to be regulated.²⁰

Thus, truckers who would have normally been put out of business because of the restriction of the exemption would be allowed to continue their operations under the grandfather rights provided for in this bill.

¹⁹Ibid., pp. 6-7.

²⁰Ibid., p. 7.

Congress took no action on this bill, and thus it died at the end of the term of 85th Congress.

During the second session of the 85th Congress, three identical bills were introduced by Representative Byrne (H.R. 12488), Representative Gray (H.R. 12681), and Representative Boyle (H.R. 12677). These bills would have amended Section 203 (b) (6) to read as follows:

Provided, that the words "property consisting of ordinary livestock, fish (including shellfish) or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include only those commodities shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission. Provided further, however, that notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries or frozen vegetables, or property imported from any foreign country;²¹

All three of the bills provided for grandfather rights to carriers which were operating on January 1, 1958. The "Commodity List" which the bill referred to was an Administrative Ruling by the Bureau of Motor Carriers of the Interstate Commerce Commission. It is a list of commodities which the Interstate Commerce Commission ruled to exempt or not exempt. (See Appendix A for the full list of exempt and nonexempt commodities.)

²¹Ibid., p. 8.

The Bureau of Motor Carriers of the Interstate Commerce Commission made the following statement in their introduction to the Commodity List.

The absence of a commodity from the list below should not be taken to mean that it is either within or not within the exemption. Only those commodities are listed as to which inquiries have been received in the past by the Bureau or which have been the subject of Commission or court proceeding.²²

It is clear from this statement that the "Commodity List" was not meant to be an all-inclusive list.

One other important point of these three bills must be noted. Because they would have limited the exemption to those commodities listed as exempt in the Interstate Commerce Commission list, the courts as well as the ICC would have been forbidden to treat any commodity as exempt if no question had been raised as to its status prior to March 19, 1958, the date Administrative Ruling No. 107 (Commodity List) was issued. No hearings were held, and no action was taken on any of these three bills.

On June 16, 1958, H.R. 12964 was introduced by Representative Pillion to amend the agricultural

²²Ibid., p. 9.

exemption by adding the following wording to Section 203

(b) (6):

Provided, that the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": Provided further, however, That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shellfish), commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, or frozen vegetables, coffee, tea, cocoa or hemp, and wool imports from any foreign country or wool, cleaned or scoured, wool tops and noils or wool waste, carded but not spun, woven, or knitted.²³

This bill, as had its predecessors, extended grandfather rights to truckers who were carrying products on or before January 1, 1958, which would now be excluded from the agricultural exemption by this bill.

While this bill specifically excluded more items than the three previously mentioned bills, it would not have been as restrictive as the others because "it would not preclude additional commodities, on which no decision had been asked

²³Ibid.

up to this point, from being judged either exempt or not exempt at some future time."²⁴

No action was taken on this bill.

During the early part of 1958, the surface Transportation Subcommittee of the Senate Interstate and Foreign Commerce Committee conducted extensive hearings on the problems of our National Transportation System. These hearings were not concerned only with the motor carrier industry, but also included the railroad industry, the water transportation industry, pipeline industry, and all other forms of transportation. On May 8, Senator Smathers, chairman of the above mentioned subcommittee, introduced S. 3778 to amend the Interstate Commerce Act. Senate Bill 3778 had a wide variety of amendments; but the one dealing with the agricultural exemption contained the same wording as the before mentioned H.R. 12488, 12681, and 12677.

The Senate Committee, on June 3, 1958, reported the bill with amendments to Senator Smathers' amendments to Section 203 (b) (6). The amended bill read as follows:

Provided, That the words "property consisting of ordinary livestock, fish (including shellfish); or agricultural (including horticultural) commodities (not including

²⁴Ibid.

manufactured products thereof)" as used herein shall include only those commodities/ property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": Provided, further, however, That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, or frozen vegetables /, or property imported from any foreign country/ and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish, when frozen or fresh;²⁵

The bill provided grandfather rights for those motor carriers in operation on or since January 1, 1958.

On June 11, 1958, this bill passed the Senate in the above form.

The House Committee on Interstate and Foreign Commerce also held hearings on our National Transportation System during the first few months of 1958. As a result of these hearings Representative Harris, on June 5, 1958, introduced H.R. 12832 as a companion bill to Senator Smathers' S. 3778. The Harris bill contained the same wording as did the Smathers bill with respect to the agricultural exemption except in the section referring to fish and fish products as can be noted in the last two lines of the above quote.

²⁵Ibid., p. 10.

This section of the Harris bill read as follows:

* * * and shall be deemed to include fish or shellfish, and fresh or frozen products thereof containing seafood as the basic ingredient, whether breaded, cooked or otherwise prepared (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, salted, pickled, spiced, corned or kippered products),²⁶

By including fresh and frozen fish products, the Harris bill made the fish exemption broader than the Smathers bill. The bill also provided grandfather rights to those carriers who were operating on or before June 1, 1958.

This bill was amended in committee, and the amendment was reported to the House on June 18, 1958. It provided for a second proviso following the words "Not Exempt" and was worded as follows:

* * * Provided further, however, That not withstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, coffee, tea, cocoa or hemp, and wool imported from any foreign country or wool, cleaned or scoured, wool tops and noils, or wool waste, carded but not spun, woven or knitted and shall be deemed to include fish or shellfish, and fresh or frozen products thereof containing seafood as the basic ingredient, whether breaded, cooked or otherwise prepared (but not

²⁶Ibid., p. 11.

including fish or shellfish which have been treated for preserving, such as canned, smoked, salted, pickled, spiced, corned or kippered products);²⁷

This amendment did not make any change at all in the bill's previous wording regarding fish and fish products. It only listed additional products which were to be excluded from the agricultural exemption.

During the House debate on June 27, two amendments were offered and accepted. One by Representative Staggers deleted "or wool cleaned or scoured," which left wool in this form within the exemption. The other amendment was by Representative Roberts, which inserted "bananas" after the word "cocoa" and thus removed the carrying of bananas from the agricultural exemption.

Out of the Smathers bill (S. 3778) and the Harris bill (H.R. 12932) emerged the Transportation Act of 1958 (Public Law 85-625) which was signed into law on August 12, 1958. The part of the Act that pertained to the agricultural exemption came primarily as a compromise between the two bills. The list of commodities excluded from exemption by H.R. 12832 was incorporated into the law and the somewhat more restrictive fish exemption of S. 3778 was also embodied into the new law.

²⁷Ibid.

The full text of the section dealing with the agricultural exemption is located in the Appendix

CHAPTER III

JUDICIAL HISTORY

In Chapter II, we found that almost every attempt to restrict the agricultural exemption through legislation met with failure (except in 1958) while those proposals which tended to broaden the exemption met with success. Thus the trend of the legislative branch of the Government was to use its powers to expand the agricultural exemption.

Here in Chapter III, we will find that the judicial branch of our Government will exhibit the same trend as did the legislative branch, inasmuch as they have tended to use their powers to broaden, rather than restrict, the agricultural exemption. These liberal interpretations by the courts have been diametrically opposite to the conservative interpretations of the Interstate Commerce Commission as pointed out by the following statement.

The purpose of this provision, originally, was to benefit the producers of the commodities involved, primarily the farmers. Therefore, the Commission has long taken the position that the exemption should be construed in that light and should not embrace commodities processed at large commercial establishments.

The courts, however, over the years gave section 203 (b) (6) a broad construction,

exempting thereunder a huge volume of commercially processed products.¹

The various interpretations of the Interstate Commerce Commission and the courts have proved very interesting. A number of the more significant cases, and the effects of them, are reviewed in the following pages.

Williams Contract Carrier Application

20 M.C.C. 634

Williams filed an application with the Interstate Commerce Commission to become a permitted contract carrier.

The Interstate Commerce Commission held that interstate, for-hire hauling of farm machinery in Williams' one truck precluded its being used, even on separate hauls, for interstate, for-hire movement of agricultural commodities on an exempt basis.²

The interpretation of this decision, reasoning that if a truck has ever been used in for-hire hauling, then it is from that day forward prohibited from hauling, even on separate haul, exempt agricultural commodities in interstate commerce, has become known as the "poisoned-vehicle doctrine."

In this decision, the Commission did not regard the private trucking of nonexempt commodities as tainting a

¹An extract taken from the Justification of Recommendation No. 7 of Interstate Commerce Commission, Washington, D. C. in their 76th Annual Report.

²Clem C. Lennenberg, "The Agricultural Exemption In Inter-State Trucking: Mend Them or End Them?," Law and Contemporary Problems, XXV (Winter, 1960), p. 154.

vehicle against the for-hire trucking of exempt commodities. This is not to indicate that the Commission was to soon drop the "poisoned-vehicle doctrine." It was to remain for a number of years.

Decision rendered on May 12, 1937.

Monark Egg Case--No. 1

Monark Egg Corporation Contract Carrier Application No. 1

26 M.C.C. 615

The Monark Egg Corporation carried eggs on its own account as a private carrier. On return (back) hauls it would carry fish and oysters for compensation. Monark felt these commodities were exempt under the agricultural exemption, and as a result filed an application solely for clarification. In denying the application of the Monark Egg Corporation, the Commission contended that if a motor truck was used at any time in carrying any commodity for compensation which was not exempt, then the vehicle was subject to the law regulating permitted and/or certificated carriers. This was nothing more than the application of the "poisoned-vehicle" doctrine which Congress had tried to restrict with the passage of legislation in 1938 when it removed the word "exclusively" from the phrase in subsection (6) which said: "motor vehicles used exclusively in carrying" (See Chapter II, page 14.)

Decision November 7, 1940.

The author infers from this case that the Interstate Commerce Commission was trying to limit the agricultural exemption to the farmer and fisherman and thus exclude private carriers from the benefit of this exemption.

Monark Egg Case--No. 2

Monark Egg Corporation Contract Carrier Application No. 2

26 M.C.C. 615

At the request of the Monark Egg Corporation the case was reopened before the Interstate Commerce Commission. The application was again denied but this time upon a different basis. "The case was reheard on request, and the Commission shifted to the 'channels of commerce principle'."³ The Commission made reference to shelled peanuts and dressed poultry, both commodities sometimes carried by Monark. Peanuts were to have reached the ordinary channels of commerce when they were shelled and poultry when they were killed and picked. With reference to fish, the Commission said that fish and shellfish, dead or alive, as taken from the water, came within the exemption. Commissioner Lee dissented from the majority opinion saying that dressed poultry and shelled peanuts had not lost their original identity. Thus Commissioner Lee was applying the "substantial identity" test.

³Lennenberg, op. cit., p. 155.

Commissioner Lee, in his dissent from the second Monark Egg decision, used the test which has since come to be called that of 'continuing substantial identity.'⁴

It was not officially accepted as a basic test until 1951 in the Determinations Case. The basic reasoning behind the continuing substantial identity test is that agricultural commodities which have not been processed and those which have been processed but as a result of processing have not acquired new forms, qualities, properties or combinations, are exempt from economic regulation.

Decision October 2, 1944.

Here in the second Monark Egg Case, the Interstate Commerce Commission agreed that private carriers could carry exempt agricultural products. But again the ICC denied the application in an effort to keep from expanding the agricultural exemption to shelled peanuts and dressed poultry.

Harwood Case

Norman E. Harwood Contract Carrier Application

47 M.C.C. 597

Harwood applied for a permit as an interstate commerce contract carrier. He carried cut-up vegetables which had been washed, cleaned, and placed in cellophane bags and boxes ready for use. The Harwood application was denied by the examiner because he said the commodities were exempt.

⁴Ibid., p. 157.

Division 5 of the Commission overruled. The Commission said that washing, cleaning, and placing the vegetables in cellophane bags and boxes placed them in the ordinary channels of commerce and therefore they were no longer exempt from economic regulation. Commissioner Lee again dissented from the majority.

The Harwood decision was so vigorously protested by farm products that the Commission was petitioned to make a full-scale investigation into the exemption of Section 203 (b) (6). In 1949, the Commission therefore reopened the Harwood case and, on its own motion, instituted an investigation into and concerning the meaning of the term 'agricultural commodities (not including manufactured products thereof).'⁵

This proceeding is known as the Determinations Case and is discussed later in this chapter.

Decision December 16, 1947.

Again in the Harwood case, the Interstate Commerce Commission tried to limit the scope of the exemption.

Dunn Case

Interstate Commerce Commission v. Dunn (5 Cir. 1948)

166 F. 2d 116

Dunn operated as an intrastate common carrier in the state of Georgia, and all of his intrastate freight consisted

⁵William J. Hudson and James A. Constantin, Motor Transportation (New York: The Ronald Press Company, 1958), pp. 544-545.

of nonagricultural commodities. He also transported baled cotton from Georgia to neighboring states, which he claimed came within the agricultural exemption. The Interstate Commerce Commission sought to get an injunction against Dunn in a district court to prevent his interstate movements until he received an operating certificate. The injunction was denied. The ICC appealed, and the issue rested upon the interpretation of the last phrase of sub-section (6), "if such motor vehicles are not used in carrying any other property or passengers, for compensation." Dunn believed he was exempt because his vehicles were not used in carrying any other property in interstate commerce for compensation. The Commission stated:

We contend that it makes no difference whether the 'other property' is carried 'at the same time,' at some other time, or whether it is moving in intrastate or in interstate commerce.⁶

Thus they were trying to invoke the "poisoned vehicle" doctrine. The district court held that Dunn's trucks were exempt since they did not carry the baled cotton in interstate commerce at the same time they were carrying other property for compensation. The Circuit Court of Appeals upheld the decision of the district court.

Decision February 5, 1948.

⁶Interstate Commerce Commission v. Dunn (5 Cir. 1948), 166 F. 2d 116.

Love Case

Interstate Commerce Commission v. Love (E. D. La. 1948)

77F Supp. 63

The Interstate Commerce Commission sought to enjoin Chester Morton Love from operating as a common carrier until he obtained a certificate. The question in this case was whether or not the term "fish (including shellfish)" included fresh headless shrimp packed in ice and frozen headless shrimp both of which Love had been transporting. It was brought out in this case that shrimp are transported only in a headless state since most are beheaded on the shrimp boat. Therefore the court concluded that the vehicles used exclusively in the transportation of fresh or frozen headless shrimp in interstate commerce, for compensation, are exempt from economic regulation. The ICC appealed this ruling, but lost.

Decision March 29, 1948.

In this case the courts overruled the Interstate Commerce Commission and thus expanded the exemption to include shrimp packed in ice and frozen headless shrimp. Thus the courts expanded the exemption to benefit the "middleman" and not the fisherman.

Monark Egg Case--No. 3

Monark Egg Corporation Contract Carrier Application No. 3
49 M.C.C. 693

After the decision in the Love case, the Monark Egg Case was reopened in order to establish the position of fish as it relates to the agricultural exemption. The Commission held that since in the Love Case shellfish and fish, not in the form taken from the water, were exempt from economic regulation then the same should hold true in the Monark Case. Commissioners Rodgers and Patterson dissented from the majority and contended that the "channels of commerce" principle should apply.

Decision September 23, 1949.

Weldon Case

Interstate Commerce Commission v. Weldon (D.C. Tenn. 1950)
90 F. Supp. 873

The Interstate Commerce Commission brought an action against Weldon for transporting raw, shelled peanuts in interstate commerce between points for which he did not have a certificate. Weldon claimed that raw, shelled peanuts came within the agricultural exemption. The court held that when the shells were removed from peanuts, they then became manufactured products and were no longer an exempt commodity. The injunction sought by the ICC was granted by the court.

Decision May 18, 1950.

Service Trucking Co. Case

Interstate Commerce Commission v. Service Trucking Co., Inc.
(E. D. Pa. 1950) 91 F. Supp. 533

The Service Trucking Co. carried dressed poultry from Maryland to Chicago and had a certificate over this route. On return hauls it carried eggs in crates. The Commission sought to prevent them from carrying the eggs until they received a certificate for these return hauls. The Service Trucking Co. claimed that it was legal to haul eggs without a certificate as long as no manufactured products were carried at the same time. The Commission agreed that the eggs were exempt but said that the trucks had, on previous trips, carried dressed poultry, which was a manufactured product. Here again the Commission was trying to invoke the "poisoned vehicle" doctrine. The court cited the Dunn Case and did not grant the injunction requested by the ICC.

Decision May 25, 1950.

Determinations Case

Determination of Exempted Agricultural Commodities
52 M.C.C. 511

The Interstate Commerce Commission instituted an investigation into the meaning of the term "agricultural commodities (not including manufactured products thereof)"

and about the same time the Harwood Case was reopened. The Commission came to the conclusion that

. . . the term '(not including manufactured products thereof)' means agricultural commodities in their natural state and those which, as a result of treating or processing have not acquired new forms, qualities, properties, or combinations.⁷

This interpretation has become known as the "continuing substantial identity" test and was the grounds on which Commissioner Lee dissented in the Second Monark Egg Case and the Harwood Case. As a result of the above interpretation the decision in the Harwood Case was reversed.

Decision April 13, 1951.

As a result of this case, the agricultural exemption was greatly expanded as will be seen in the following cases which cite the "continuing substantial identity" test.

Monark Egg Case No. 4

Monark Egg Corporation Carrier Application, No. 4

52 M.C.C. 576

The American Trucking Association, Inc. and other regulated trucking interests petitioned the Interstate Commerce Commission to reopen this case. They agreed that the decision of the Interstate Commerce Commission v. Love Case was binding in regard to beheaded shrimp, but contended

⁷Lennenberg, op. cit., p. 159.

the Commission had erred in extending the same doctrine to other fish. They felt that the "channels of commerce" principle should have prevailed. The regulated truckers feared that the Love decision would result in irreparable damage to them through the loss of much traffic to the exempt carriers. The Commission answered this way:

The fact that some certificated carriers may be adversely affected by a proper interpretation of the statute is a matter which can be relieved only by Congress.⁸

Two commissioners dissented from the majority adhering to the "channels of commerce" doctrine.

Decision April 13, 1951.

Yeary Transfer Case

Interstate Commerce Commission v. Yeary Transfer Co., Inc.

(E. D. Ky. 1952) 104 F. Supp. 245

The Yeary Transfer Company carried redried leaf tobacco in interstate commerce. The Interstate Commerce Commission brought an action to stop the movement of redried leaf tobacco until Yeary received a certificate. Yeary contended that redried leaf tobacco was an exempt commodity. The court held that the redrying did not cause the leaf

⁸Monark Egg Corporation Carrier Application No. 4, 52 M.C.C. 576.

tobacco to come under the clause "(not including manufactured products thereof)."

It [the court] cited the Anheuser-Busch and American Fruit Growers' cases, however, and on that score and in its phrasing, it was consistent with the continuing substantial-identity test.⁹

Thus the courts applied the "continuing substantial identity" test and allowed Yeary to continue to haul redried leaf tobacco as an exempt commodity.

Decision April 3, 1952.

Here again the exemption was expanded by the use of the "continuing substantial identity" test.

Florida Gladiolus Case

Florida Gladiolus Growers Assn. et al. v. United States et al.

(S.D. Fla. 1952) 106 F. Supp. 525

The Florida Gladiolus Growers Association engaged in transporting cut gladiolus and gladiolus bulbs. They sought an injunction to restrain the Interstate Commerce Commission from enforcing its order in the Determinations Case. The order said that nursery stock, flowers, and bulbs did not come within the agricultural exemption. The court granted the injunction because before the decision was rendered

⁹Lennenberg, op. cit.

the phrase "(including horticultural)" was added to Section 203 (b) (6).

Decision July 23, 1952.

Kroblin Case

Interstate Commerce Commission v. Kroblin

(N.D. Iowa 1953) 113 F. Supp. 599

Kroblin was engaged in transporting dressed poultry in interstate commerce without a certificate. The Interstate Commerce Commission sought to enjoin him from this operation until he received a certificate. Kroblin contended that a certificate was not necessary because dressed poultry was an exempt commodity. The holding of the court is as follows:

The Interstate Commerce Commission contends that the purpose and effect of the change in terms from 'unprocessed agricultural commodities' to 'agricultural commodities (not including manufactured products thereof)' was to include ginned cotton and pasteurized milk within the scope of the exemption. The defendant and the Secretary of Agriculture claim that it was not the intent of Congress by the change in terms to limit the effect of the change to ginned cotton and pasteurized milk. It is the claim of the defendant and the Secretary of Agriculture that by the change in terms Congress manifested the intent that the mere fact that an agricultural commodity had been processed would not cause it to be outside of the scope of the exemption. It is their claim that Congress by the change manifested the intent that farm commodities could be processed without losing their status as an exempt commodity and that it was only when such commodities had

achieved the status of manufactured articles that they lost their exempt status.

It is the holding of the Court that New York dressed poultry or eviscerated poultry do not constitute 'manufactured' products within the intent and meaning of Section 203 (b) (6). It is the feeling of the Court that an opposite holding would in reality constitute an attempt to accomplish by means of judicial construction that which Congress has steadfastly refused to allow to be accomplished by legislation.¹⁰

This ruling placed fresh and frozen dressed poultry within the agricultural exemption. This was the same decision and the same test that Commissioner Lee had cited a dozen years before, when he tried to persuade his fellow commissioners that dressed poultry and shelled peanuts are not manufactured products.

Decision June 30, 1953.

Frozen Food Express Case

Frozen Food Express v. United States of America and

Interstate Commerce Commission No. 1

(S.D. Texas 1955) 128 F. Supp. 374

As a certificated carrier, the Frozen Food Express Co. wanted to haul exempt commodities to all points in the United States irrespective of the limitations posed by its own certificate. The firm contended that the ICC report in the

¹⁰Interstate Commerce Commission v. Kroblin (N.D. Iowa 1953) 113 F. Supp. 599.

Determinations Case, by excluding certain commodities from the exemption, deprived it of the right to do so. They brought an action in the Federal District Court in Houston to enjoin the Commission and the United States from enforcing or recognizing the validity of the report.

The Federal District Court refused to rule, but on an appeal the Supreme Court sent it back to the District Court for a ruling. The court reviewed the ICC's findings in the Determinations Case and then declared a large number of agricultural commodities to be exempt that had undergone processing but had retained their original identity.

Decision January 26, 1955.

Here again the reader can see that the agricultural exemption was expanded by using the "continuing substantial identity" test.

Frozen Food Express Case--No. 2

Frozen Food Express v. United States of America and

Interstate Commerce Commission No. 2

(S.D. Texas 1955) 128 F. Supp. 374

Three motor carriers filed a complaint with the Interstate Commerce Commission that the Frozen Food Express Co. was transporting fresh and frozen dressed poultry, fresh and frozen meats, and meat products in interstate commerce, for hire, to points not covered by a certificate. Frozen

Foods Express Co. contended that it was legal and claimed that these commodities came within the agricultural exemption. The ICC contended that these commodities were not exempt and ordered the company to cease this operation. The order was taken to court and the court upheld Frozen Foods Express Co.'s contention that fresh and frozen poultry was an exempt commodity. But the court also decided that fresh and frozen meats were not exempt commodities. The decision regarding fresh and frozen poultry was appealed to the Supreme Court, which upheld the lower court's ruling by invoking the "substantial identity" test.

Decision January 26, 1955.

Home Transfer and Storage Case

Home Transfer and Storage Co. v. United States of America
and Interstate Commerce Commission

(W.D. Washington 1956) 141 F. Supp. 599

Home Transfer and Storage Co. transported frozen fruits and vegetables in the states of Washington and California without authorization from the Interstate Commerce Commission. The carrier took the position that authorization by the ICC was not required since the commodities they hauled were exempt. The ICC did not agree with this and ordered them to stop the operation.

Home Transfer and Storage took the order to court and the court concluded that the commodities were exempt. In reaching such a decision the courts had again applied the "substantial identity" test. This ruling was appealed to the Supreme Court which upheld the decision of the lower court.

In Home Transfer, . . . , and other subsequent cases the so-called 'substantial identity' test has been ruled on to remove a large number of commodities from Commission jurisdiction.¹¹

Decision May 7, 1956.

Consolidated Case

Consolidated Truck Service, Inc. v. United States of America
and Interstate Commerce Commission
(D.N.J. 1956) 144 F. Supp. 814

The Consolidated Truck Service, Inc. brought a suit in the U. S. District of New Jersey to set aside the finding of the Determinations Case which said that raw shelled peanuts were not agricultural commodities, but were manufactured products thereof.

Once again the courts applied the substantial identity test and upheld Consolidated's contention and thus set aside the ruling of the Determinations Case.

Decision September 28, 1956.

¹¹Hudson and Constantin, op. cit., p. 546.

Determination of Exempted Agricultural Commodities
(Coffee and Cucumbers)

74 M.C.C. 549

Patrick Izzi, a nonregulated carrier, petitioned the Interstate Commerce Commission for a ruling on the status of green coffee beans. About the same time a ruling was also requested by the Hadder Trucking Company on whether salt-cured cucumbers fall within the exemption. The Interstate Commerce Commission also desired a determination on the status of cocoa beans and tea. The result was a reopening of the Determinations Case in order to get an official ruling as to whether or not these four commodities would fall within the agricultural exemption granted in Section 203 (b) (6) of the Interstate Commerce Act.

The determination ruling on these four items resulted in two basic questions: (1) whether agricultural commodities grown in foreign countries are subject to the exemption and (2) whether because of processing or manufacture, commodities should be removed from the agricultural exemption provided for in Section 203 (b) (6).

In the first case, the Commission decided that the term "agricultural (including horticultural) commodities (not including manufactured products thereof)" includes foreign grown agricultural products.

To the second case, the Commission cited the Frozen Food Express Case (351 U.S. 49) and the Home Transfer and Storage Case (352 U.S. 884) for the application of the "continuing substantial identity" test. The Commission, with individuals descending, stated:

Applying this test to the commodities here involved, we are compelled to the conclusion that the processes undergone by them do not cause them substantially to lose their identity as tea leaves, coffee beans, and cocoa beans, or cucumbers and that tea, green coffee beans, cocoa beans, and salt-cured cucumbers are, therefore, agricultural commodities.¹²

Decision February 11, 1958.

¹²74 M.C.C. 549.

CHAPTER IV

COMMODITIES

When Congress passed the agricultural exemption in 1935, it was a generally accepted fact that the intent of Congress was to provide a cheap and flexible type of transportation to farmers and ranchers. The exemption of agricultural products meant that farmers would be able to move their commodities from the farm to the market at a low rate. It was felt that since farmers generally relinquished title to their goods at the first market, then thereafter the movement of these goods would be subject to economic regulation.

Because of the nature of the farming business, it is essential, if farmers are to make a profit, that they be able to ship these products to the particular market which is paying the highest price. In order to do this the farmer must have access to flexible, all-year transportation that is not restricted in the direction it can move or the routes it can travel. Thus the agricultural exemption was passed with the intent of providing farmers with a cheap and flexible form of transportation for the movement of their commodities.

Shortly after 1935, most goods that moved under the agricultural exemption were actually legitimate agricultural

commodities in movement from the farm to the first market where they were sold by the farmer. In the years following 1935, a number of legislative changes were made in the wording of the exemption (almost always to make it more liberal). Also, beginning in the late 1930's, there were many cases in court to determine whether or not commodities came within the agricultural exemption. In almost every case the courts handed down a liberal ruling, including within the exemption many products which were previously nonexempt. These legislative changes and liberal court interpretations have had the effect of greatly expanding the exemption to the point where many products have actually been sold by the farmer, processed and/or manufactured, yet they still move under the so-called agricultural exemption. A few examples of such commodities are frozen breaded shrimp, powdered dry eggs, breaded cooked frozen fish, and shelled peanuts. In order to know exactly what products come within the exemption, see Appendix A for a complete list. As can be seen from the above examples and Appendix A, many of the commodities which today move under the agricultural exemption are a "far cry" from commodities Congress intended to exempt.

TYPE OF GOODS HAULED

About the only good statistical data available on the type and tonnage of exempt commodities hauled today comes

from the Government Document For-Hire Motor Carriers Hauling Exempt Agricultural Commodities. The statistics to be presented are somewhat misleading since the figures quoted here are based on a sample of only 1,514 exempt carriers. This was only a small fraction of the exempt carriers in operation at the time of the study as can be seen from the following statement: "Under the exemption a very substantial unregulated transportation business has been built up in which some 240,000 trucks are constantly engaged."¹ The figures in this paper are taken from the government study and have not been projected in order to represent the total tonnage hauled by the exempt carrier industry. They will give a fairly good representation of the percentage of the various commodities hauled by exempt truckers.

SOURCE OF INFORMATION

The source of information for the Government study was obtained by mailing out 5,584 questionnaires to known exempt truckers in the continental United States, asking for data on their operations in 1960. Out of the 5,584 questionnaires, a sample of which can be found in Appendix C, only 1,514 usable replies were returned. The findings of the Government study were based on these replies.

¹Marvin L. Fair and Ernest W. Williams, Economics of Transportation (New York: Harper and Brothers Publishers, 1959), p. 503.

The carriers contacted for the study were picked at random from a mailing list of 27,920 names of carriers known to be primarily engaged in the transportation of agricultural commodities. The mailing list came from three sources: (1) The Motor Carrier Bureau of the Interstate Commerce Commission, (2) National Agricultural Transportation League, and (3) records of the U. S. Department of Agriculture. The list was not completely up to date, but it represented the best list of exempt carriers available at that time.

Table I, on the following page, presents the statistics on the sample taken and the responses in the Government study.

Another very important point which may cause the figures presented in the study to be somewhat misleading is the fact that most of the carriers who reported back represented the larger and most well-established firms in the industry. Most firms in the exempt carrier industry are small and operate only one or two trucks. They do not operate out of any fixed home office and in many cases are in poor financial condition. These small firms are the most numerous; but these are also the firms which, to a large extent, did not choose to return the questionnaire sent out by the Government study group. Since it was the larger, more well-established firms which returned the questionnaires, the figures presented in the Government study are not completely representative of the industry.

TABLE I

STATISTICS ON SAMPLE TAKEN AND RESPONSES TO
 QUESTIONNAIRES USED IN GOVERNMENT STUDY: FOR-HIRE
MOTOR CARRIERS HAULING EXEMPT AGRICULTURAL COMMODITIES

	Number	Percentage of total	Percentage of addressees
Number on list from which sample was drawn	27,920	100	---
Number in sample	5,584	20	100
Questionnaires returned but not in usable form	1,598	6	29
Questionnaires used in study	1,514	5	27
Questionnaires not returned	1,923	7	34
Questionnaires returned unopened	549	2	10
Distribution of questionnaires returned but not in usable form:			
Questionnaires returned but not in usable form	1,598	6	29
Responses from carriers having ICC operating authority	272	1	5
Responses from carriers out of business	690	3	12
Responses with no usable information, and responses from those who were never in trucking business	636	2	12

(See copy of questionnaire in the appendix.)

Source: Mildred R. DeWolfe, For-Hire Motor Carriers Hauling Exempt Agricultural Commodities--Nature and Extent of Operations, Marketing Economics Division, United States Department of Agriculture, Marketing Research Report No. 585 (Washington: Government Printing Office, 1963), p. 3.

The replies in the study were summarized in aggregate and also summarized according to geographic regions. The geographic regions used in the study are as follows:

<u>Regions in the study</u>	<u>Basic census regions</u>
North Atlantic	New England Middle Atlantic
East North Central	East North Central
West North Central	West North Central
South Atlantic	South Atlantic
South Central	East South Central West South Central
Western	Mountain Pacific

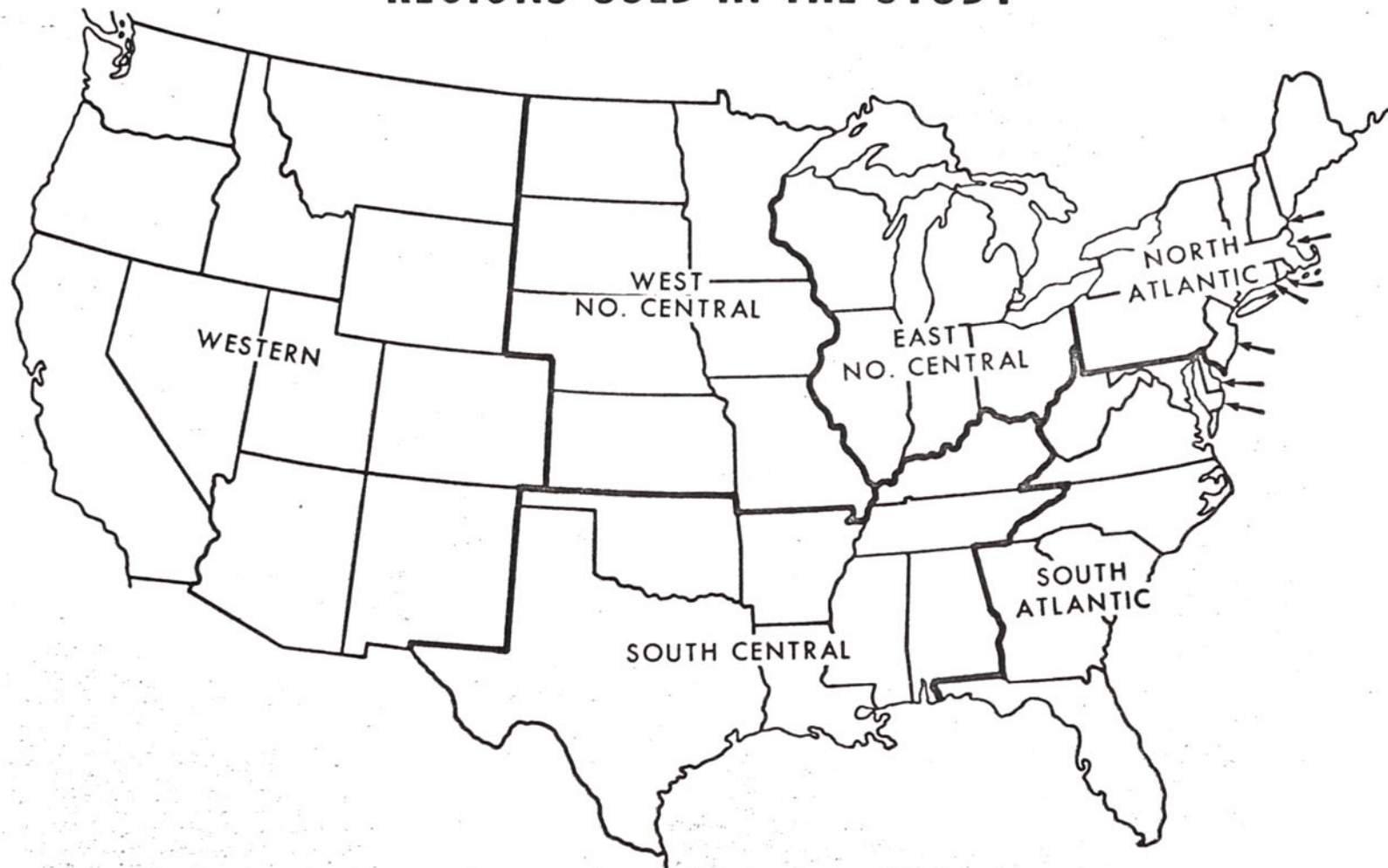
Figure 1 on the following page shows a map of the above geographic regions.

PERCENT OF TONNAGE HAULED

In the Government study, the tonnage hauled was broken down into nine commodity groups. These groups were as follows:

- | | |
|-----------------------|---------------------|
| 1. Grain | 6. Poultry and Eggs |
| 2. Livestock | 7. Cotton and Wool |
| 3. Milk and Cream | 8. Hay and Forage |
| 4. Vegetables | 9. Others |
| 5. Fruits and Berries | |

REGIONS USED IN THE STUDY



"The group 'other' included: horticultural crops--flowers--seafoods, logs - (trees cut to length), tobacco, nuts, honey, natural fertilizer, and empty containers used in hauling exempt agricultural commodities."²

From Chart 1 on the following page, one can see that ranked percentage wise in importance in the United States, grain represented the highest tonnage with 29 percent of the total. Livestock ranked second with 20 percent of the total while milk and cream was third with 14 percent. Of the remainder, vegetables made up 12 percent, fruits and berries over 9 percent, "other" made up 7 percent, poultry and eggs 5 percent, cotton and wool 2 percent, and hay and forage a little over 1 percent.³

PERCENTAGE OF TONNAGE HAULED BY REGIONS

One finds in the study that the above are average percentage figures over the whole country and therefore are not representative of the various sections of the United States.⁴ An analysis will be made of the percent of tonnage

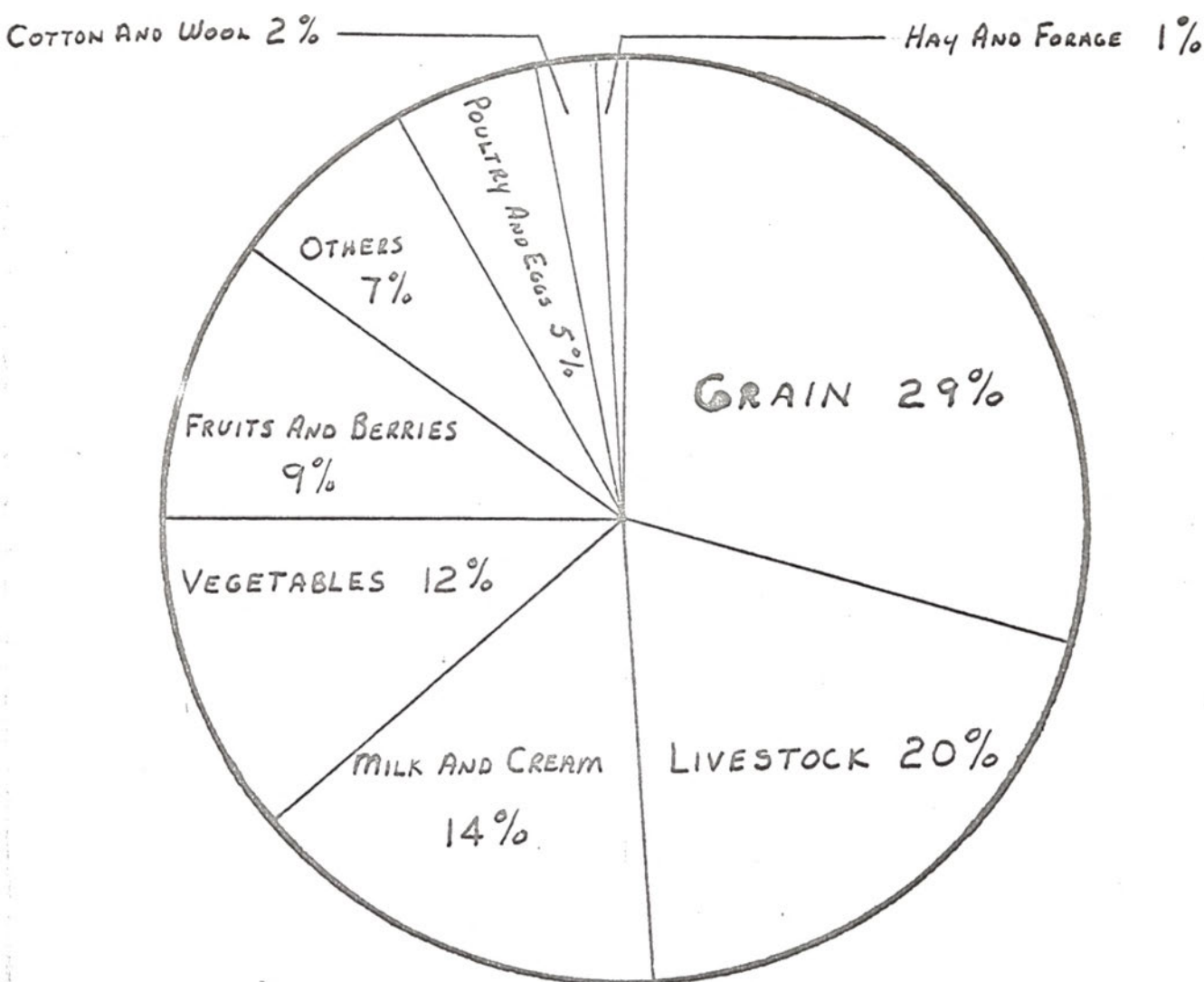
²Mildred R. DeWolfe, For-Hire Motor Carriers Hauling Exempt Agricultural Commodities--Nature and Extent of Operations, Marketing Economics Division, United States Department of Agriculture, Marketing Research Report No. 585 (Washington: Government Printing Office, 1963), p. 9.

³Ibid., p. 10.

⁴See page 54 for sectional divisions used in Government study.

CHART 1

PERCENTAGE OF TONNAGE HAULED BY COMMODITY
GROUPS IN THE UNITED STATES



Source: Data for these charts came from figures given in For-Hire Motor Carriers Hauling Exempt Agricultural Commodities.

hauled by regions. In connection with the discussion of each region, a chart is presented which shows the percent of tonnage hauled by that region. Each chart is broken down into the nine commodity groups.

The North Atlantic Region. In the North Atlantic region, truckers hauled more milk than any other commodity, milk representing 42 percent of that region's total tonnage. Vegetables accounted for 18 percent of the total. Fruits and berries and "others" each accounted for about 10 percent of the total. Livestock was next, representing about 8 percent. Following livestock came grain which amounted to 7 percent of the total.

The East North Central Region. In the East North Central section⁵ of the United States, grain represented the greatest percentage of total tonnage hauled by accounting for 37 percent. Following grain came milk and cream which accounted for 20 percent of the total. Livestock was third with 17 percent; "others" next with 8 percent, followed by vegetables with 7 percent of the total tonnage hauled.

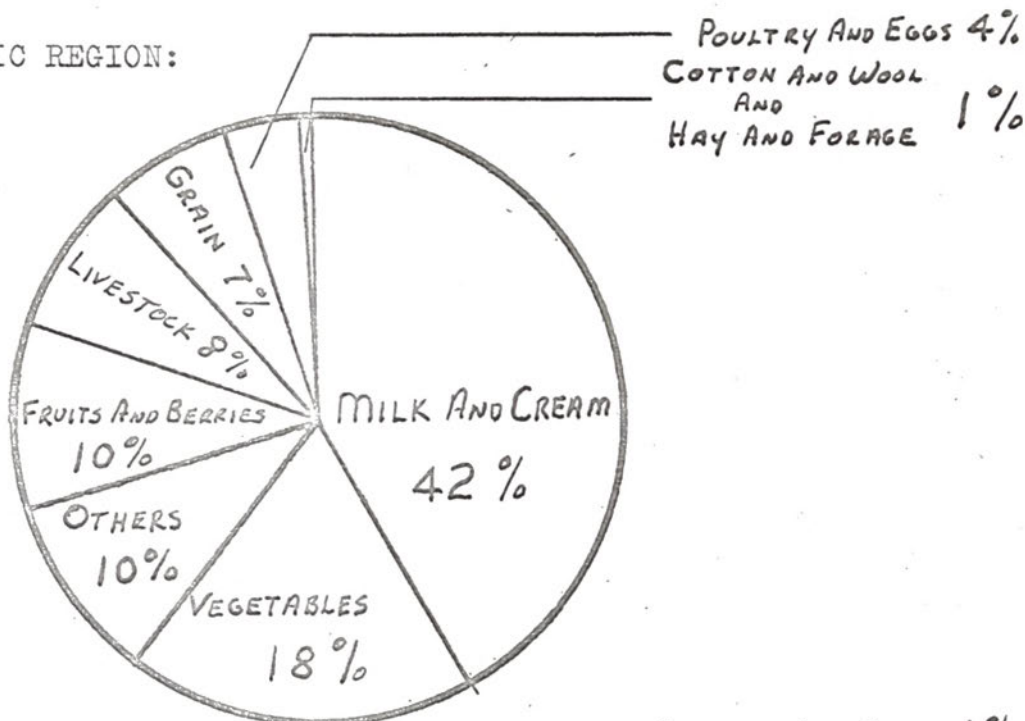
The West North Central Region. The West North Central was somewhat similar with grain being its leader,

⁵Sections, regions, and area refer to the geographic segment under discussion.

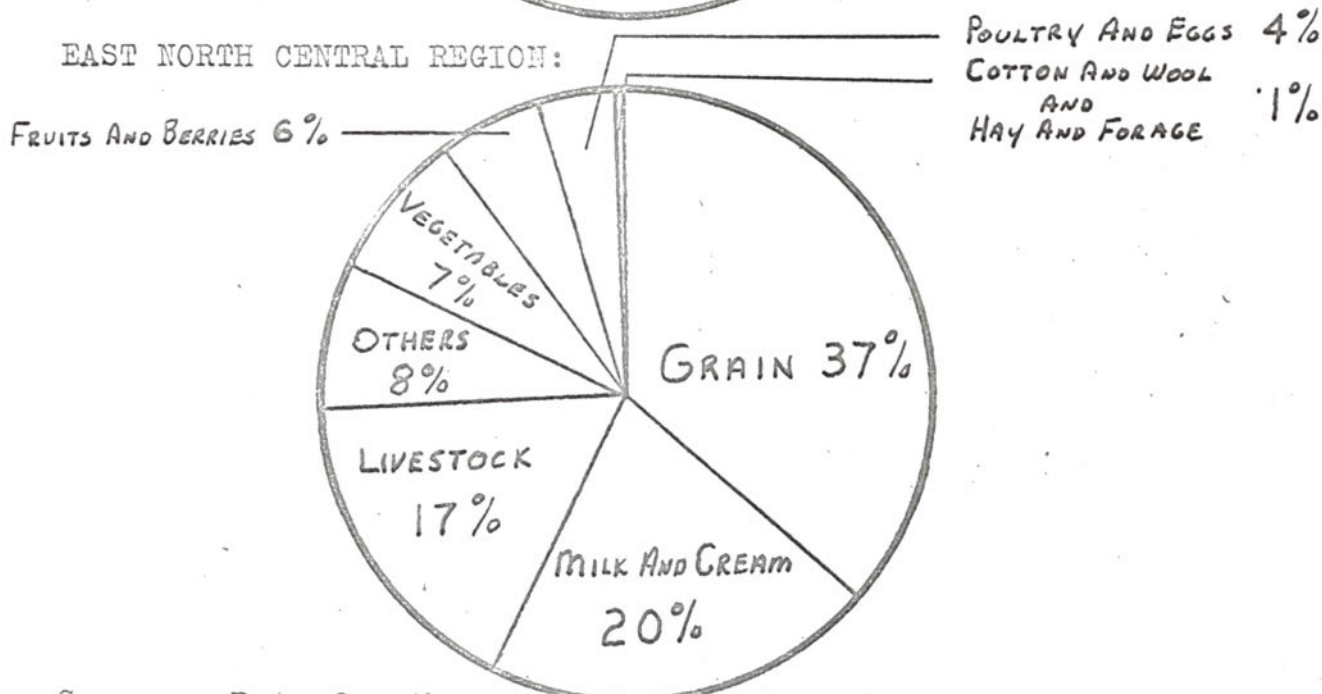
CHART 2

PERCENTAGE OF TONNAGE HAULED BY COMMODITY GROUPS

NORTH ATLANTIC REGION:



EAST NORTH CENTRAL REGION:



Source: Data for these charts came from figures given in For-Hire Motor Carriers Hauling Exempt Agricultural Commodities.

representing 39 percent of the total tonnage. Livestock was second, representing 38 percent of the total. Following livestock came eggs and poultry with 7 percent; vegetables, 5 percent; "others" with 4 percent; milk and cream, 3 percent; and fruits and berries, 2 percent.

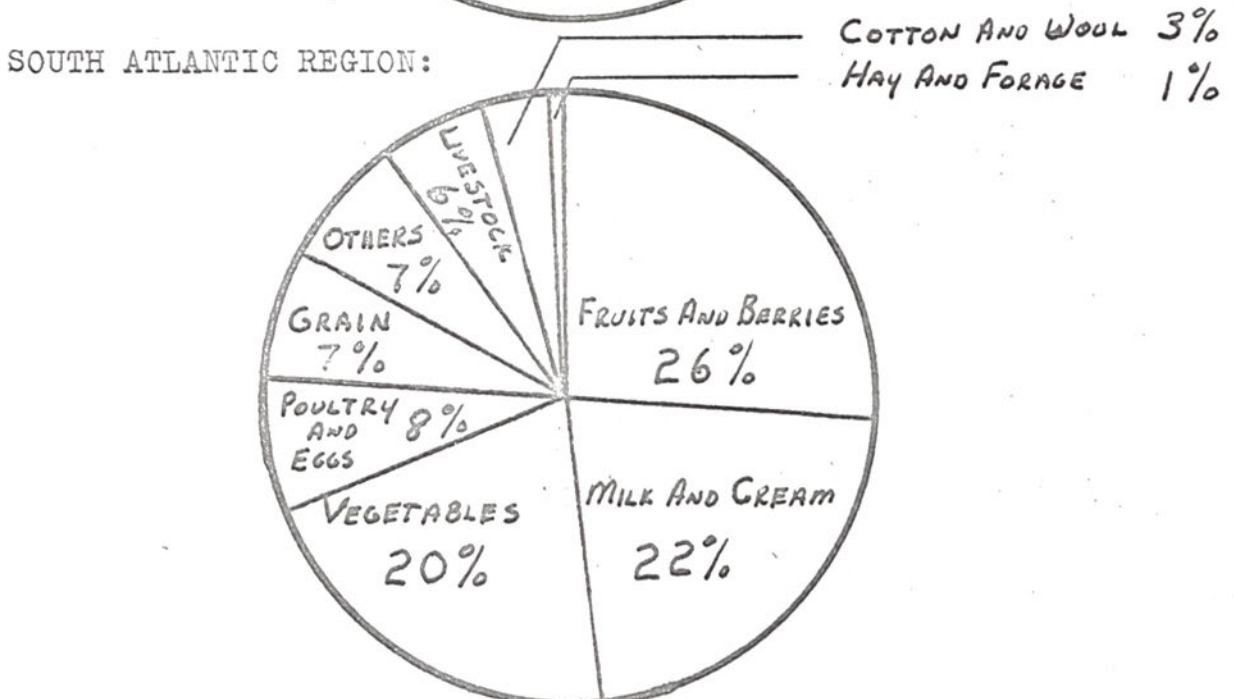
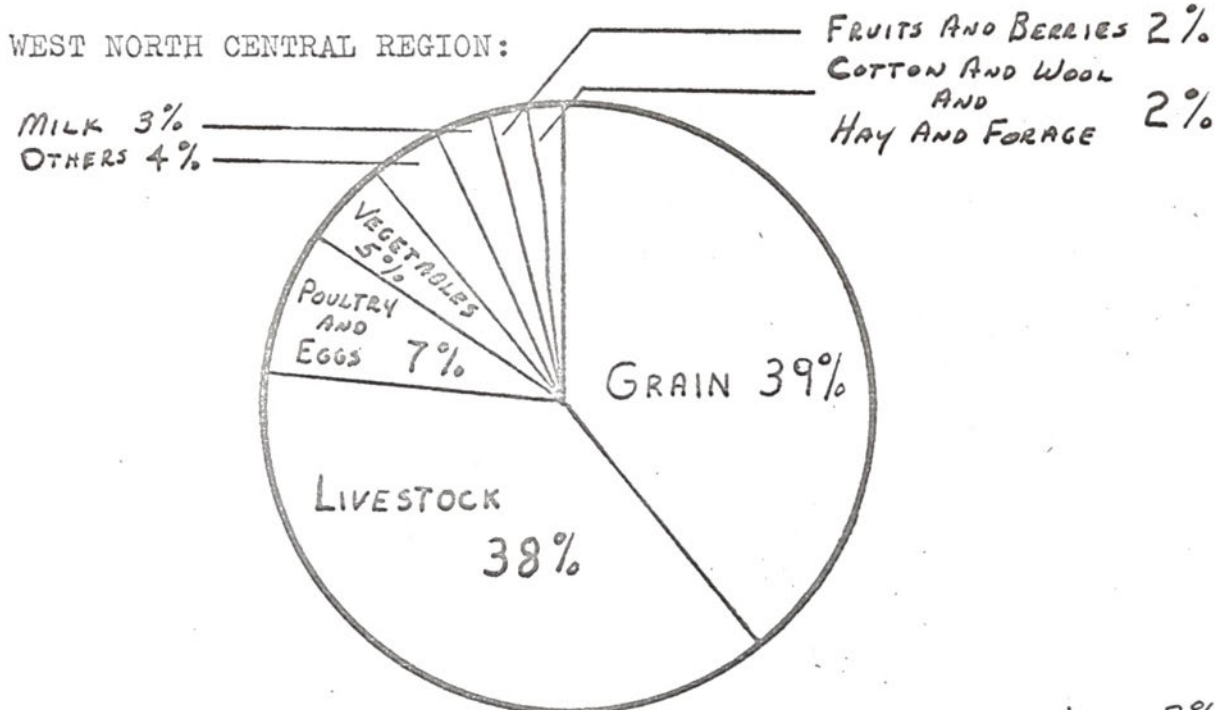
The South Atlantic Region. Carriers in the South Atlantic hauled more fruits and berries than any other commodities--26 percent. The next high for this region was milk and cream, accounting for 22 percent of the total tonnage hauled. Vegetables, accounting for 20 percent, was third; eggs and poultry, fourth with 8 percent; followed by grain and "others" each representing 7 percent of the total. Following this group was livestock, accounting for 6 percent of the region's total tonnage hauled.

The South Central Region. The highest tonnage in the South Central region was grain, which represented 41 percent of the total tonnage hauled. The remaining groups were livestock with 12 percent; vegetables, 11 percent; and cotton and wool, 9 percent.

The Western Region. In the Western region, carriers reported that grain was their largest haul, representing 31 percent of their total tonnage. Livestock and vegetables were next each representing 20 percent of the total. Next

CHART 3

PERCENTAGE OF TONNAGE HAULED BY COMMODITY GROUPS



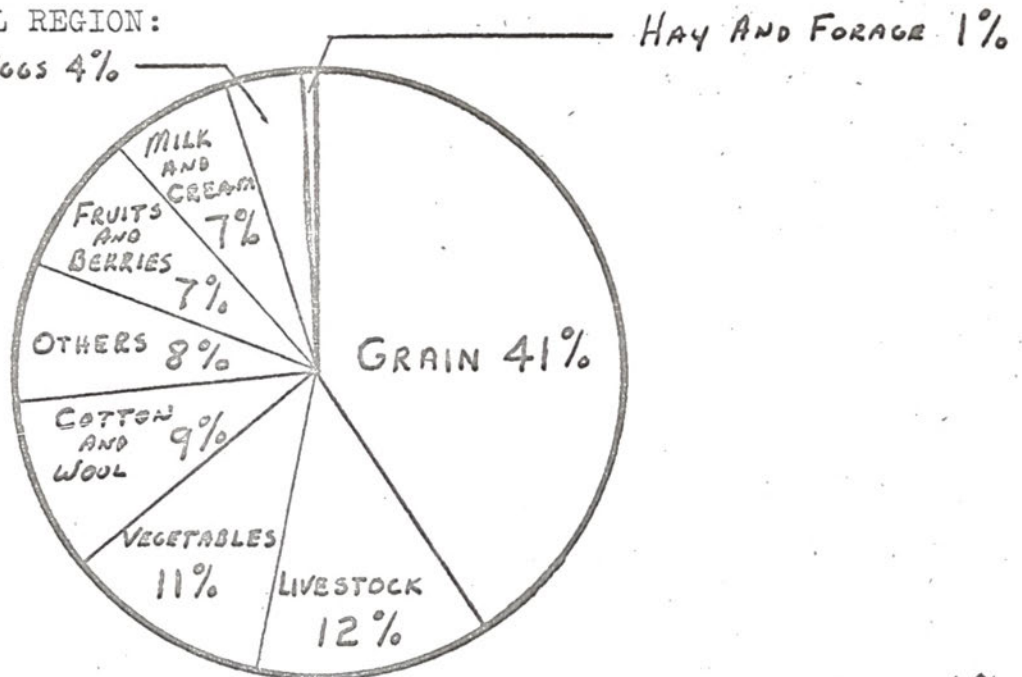
Source: Data for these charts came from figures given in For-Hire Motor Carriers Hauling Exempt Agricultural Commodities.

CHART 4

PERCENTAGE OF TONNAGE HAULED BY COMMODITY GROUPS

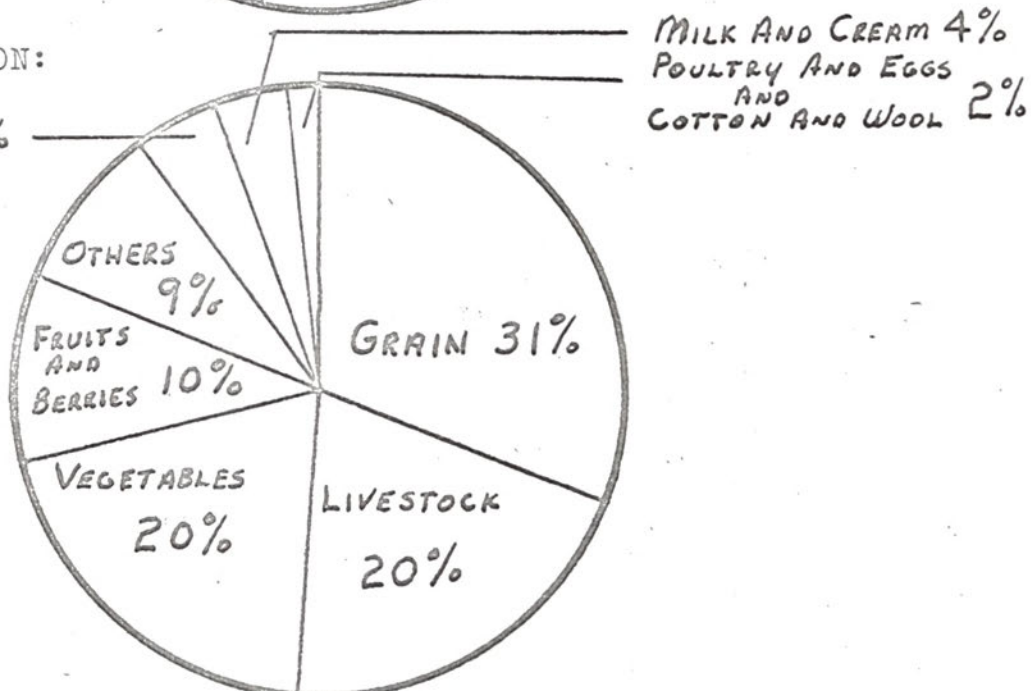
SOUTH CENTRAL REGION:

POULTRY AND EGGS 4%



WESTERN REGION:

HAY AND FORAGE 4%



Source: Data for these charts came from figures given in For-Hire Motor Carriers Hauling Exempt Agricultural Commodities.

came fruits and berries with 10 percent, followed closely by "others" representing 9 percent of the total tonnage hauled.

By analyzing the data presented in the study, it can be seen that usually the largest tonnage hauled by truckers from each region is the commodity produced in the greatest quantity in that region. Table II points out this point regarding livestock. "Livestock movements by carriers in the survey follow the same pattern regionwise as livestock marketings for the United States."⁶

The same tendency holds true for grain. As Table III points out, there is a very close similarity between the percentage figures of all grain sold in the United States and grain hauled by the truckers in the Government study.

MAJOR MOVEMENTS OF COMMODITIES

Because of the flexibility of exempt carriers, they are able to and do haul exempt commodities to many different states. From Table IV one can see that truckers reported that 35 percent of their major movements of exempt agricultural products originated in a region outside of their home region and 49 percent of their major deliveries were made to regions other than their home region.

⁶DeWolfe, op. cit.

TABLE II

UNITED STATES LIVESTOCK MARKETINGS, AND LIVESTOCK HAULED BY TRUCKERS
IN THE STUDY, BY REGIONS, 1960 1/

Origin	U.S. livestock marketings		Livestock hauled by truckers in study		
	Quantity <u>2/</u>	Percentage of total	Quantity	Percentage of total	Percentage of U.S. marketings
	<u>Tons</u>	<u>Percent</u>	<u>Tons</u>	<u>Percent</u>	<u>Percent</u>
North Atlantic	686,260	2	66,176	4	10
East North Central	5,845,114	21	281,374	15	5
West North Central	11,434,698	40	963,427	53	8
South Atlantic	1,353,805	5	93,573	5	7
South Central	4,521,780	16	167,082	9	4
Western	4,433,155	16	245,974	14	6
Total	28,274,812	100	1,817,606	100	6

1/ Includes cattle and calves, hogs, sheep and lambs.

2/ Supplement for 1961 to Livestock and Meat Statistics, Supp, for 1961 to U.S. Dept. Agr. Statis. Bul. 230, June 1962.

Source: Mildred R. DeWolfe, For-Hire Motor Carriers Hauling Exempt Agricultural Commodities--Nature and Extent of Operations, Marketing Economics Division, United States Department of Agriculture, Marketing Research Report No. 585 (Washington: Government Printing Office, 1963, p. 40.

TABLE III

PRINCIPAL GRAINS SOLD IN THE UNITED STATES, AND GRAIN HAULED BY TRUCKERS
IN THE STUDY, BY REGIONS, 1960 1/

Origin	Grain sold in U. S.		Grain hauled by truckers in study		
	Quantity <u>2/</u>	Percentage of total	Quantity	Percentage of total	Percentage of U.S. sales
	<u>Tons</u>	<u>Percent</u>	<u>Tons</u>	<u>Percent</u>	<u>Percent</u>
North Atlantic	1,698,724	1	60,389	2	4
East North Central	27,515,659	24	621,298	23	2
West North Central	50,361,607	44	981,421	37	2
South Atlantic	3,841,457	3	95,966	3	3
South Central	17,063,197	15	555,000	21	3
Western	14,865,687	13	366,548	14	3
Total	115,346,331	100	2,680,622	100	2

1/ Includes corn, wheat, oats, barley, rye, rice, sorghum, and buckwheat.

2/ Field and Seed Crops, Production, Farm Use, Sales, Value 1960-61. Cr Pr 1 (62)
U.S. Dept. Agr., Statis, Rptg. Serv.

Source: Mildred R. DeWolfe, For-Hire Motor Carriers Hauling Exempt Agricultural Commodities--Nature and Extent of Operations, Marketing Economics Division, United States Department of Agriculture, Marketing Research Report No. 585 (Washington: Government Printing Office, 1963, p. 40.

TABLE IV

PERCENTAGE OF MAJOR MOVEMENTS OF EXEMPT COMMODITIES
 THAT ORIGINATED IN OR WERE DELIVERED TO THE TRUCKER'S
 OWN REGION OR OUTSIDE IT,
 BY REGION OF HOME OFFICE, 1960

Region of home office	Originated--		Delivered--	
	Within own region	Outside of region	Within own region	Outside of region
	Percent	Percent	Percent	Percent
North Atlantic	60	40	64	36
East North Central	58	42	47	53
West North Central	75	25	59	41
South Atlantic	64	36	35	65
South Central	44	56	47	53
Western	85	15	72	28
Total	65	35	51	49

Source: Mildred R. DeWolfe, For-Hire Motor Carriers
 Hauling Exempt Agricultural Commodities--Nature and Extent
 of Operations, Marketing Economics Division, United States
 Department of Agriculture, Marketing Research Report No. 585
 (Washington: Government Printing Office, 1963), p. 40.

Truckers of the South Central region of the United States reported that over half their major movements originated outside their home region, while in the North Atlantic and East North Central regions over 40 percent originated in other regions. The Western region was the only region where the percentage of originations of major commodity movements outside the region fell below 25 percent.⁷

In terms of deliveries to regions outside their home regions, truckers from three regions--South Atlantic, South Central, and East North Central--reported from one-half to two-thirds of their major commodity movements came within this category.⁸

Although 65 percent of the originations and 51 percent of the deliveries were within the carrier's home region, it must be remembered that these regions are composed of several states. Since there are a number of states in each region, this means that many of the interregion movements were actually interstate hauls. It was estimated in the study that over half of the carriers' total tonnage was transported between States.

Truckers reported originating more principal movements of vegetables than any other commodity. Vegetables amounted to 28 percent of the total hauls. It must be remembered that the figures quoted earlier in this chapter were

⁷Ibid., p. 13.

⁸Ibid.

based on weight and not on the number of hauls as presented in this part. Fruits and berries ranked second with 19 percent, grain third with 18 percent, and livestock fourth with 13 percent of the total number of hauls.

The North Atlantic Region. Carriers in the North Atlantic region reported that over half of their major originations were made of fruits and berries and vegetables and that they picked up 60 percent of their commodities within their home region.

"About two-thirds of all deliveries by the carriers from the North Atlantic region were made to States in their region."⁹ The majority of these deliveries consisted of fruits and berries and vegetables, but there was also a significant number of deliveries of poultry and eggs and milk and cream within this region.

The East North Central Region. East North Central carriers reported that about 58 percent of their hauls originated within their home region and that these hauls consisted more of vegetables than any other commodity. Fruits and berries were second and accounted for about one-fifth of the major movements.

⁹Ibid., p. 14.

East North Central carriers reported that about 47 percent of all deliveries were within that region. Vegetables comprise about 25 percent of the total deliveries of carriers located in the East North Central region. About half of these deliveries were within the home region. Fruits and berries followed about the same pattern as did vegetables.

The West North Central Region. Carriers from the West North Central section reported that 75 percent of their shipments originated in their home region. "Grain and livestock combined accounted for two-thirds of their total pick-ups."¹⁰ Vegetables were next, accounting for 9 percent of the home region originations.

Fifty-nine percent of all deliveries were within the West North Central home region. Livestock and grain comprise about 37 percent of the deliveries in the region.

The South Atlantic Region. Truckers in the South Atlantic region reported that about two-thirds of their principal hauls originated from states within the region. Fruits and berries accounted for about 23 percent of the originations while vegetables accounted for 27 percent.

Carriers in the South Atlantic section reported that they made more deliveries to other regions than they did

¹⁰Ibid.

within their own region. Thirty-six percent of their hauls were delivered to the North Atlantic region and only 35 percent of the hauls were delivered within the home region. Eighty percent of the deliveries to the North Atlantic States consisted of fresh produce and 9 percent was poultry and eggs.

The South Central Region. Truckers in the South Central region reported that less than half of their originations came from their region. Of the hauls that did originate in the region, fruits and berries and vegetables accounted for 34 percent, grain 25 percent, livestock 14 percent, and eggs and poultry 10 percent.

About 47 percent of the principal movements were delivered in the South Central region. The remaining 50 percent was spread rather evenly between the West North Central region, the South Atlantic region, and the Western region. The majority of the deliveries consisted of fresh produce.

The Western Region. Carriers in the Western region reported that about 85 percent of their principal movements originated in their own region. "These loads included most of the fruits and berries and vegetables hauled by them, three-fourths of the grain, all livestock, cotton and wool and most of the hay and forage."¹¹

¹¹Ibid., p. 15.

About 72 percent of these deliveries were to States within the Western region, most of which consisted of fruits and berries and vegetables.

MILES TRAVELED

The 1,514 truckers in the Government study reported that they traveled about 278,000,000 miles during the year of 1960, averaging over 183,000 miles per carrier reporting. Regionwise, the mileage was highest in the South Central region which averaged almost 250,000 miles per carrier. Miles traveled was the lowest in the West North Central region where carriers averaged about 150,000 miles.

Seventy percent of the 278,000,000 miles traveled in 1960 were laden miles, leaving only 30 percent of mileage traveled being empty or "dead-head" miles. Only about one percent of the truckers reported that they had no empty miles, but two carriers reported that they each had at least 1,000,000 empty. These were two of the largest carriers which reported in the study, and this empty mileage amounted to 33 percent of all miles traveled by one carrier and 45 percent of all miles traveled by the other carrier.

The writer feels sure that the above stated figures represent the percentage of empty or "dead-head" miles traveled by any exempt trucker who operates legally within the agricultural exemption. It should also be pointed out

that these were only two out of 1,514 reporting this high of percentage of empty miles. Most exempt truckers do everything within their power to get a return haul, legal or illegal. The above example is an exception to the rule.

The average total miles traveled per truck was about 54,000 miles. Truckers in the South Central region reported the highest average mileage per truck--over 71,000 miles, while the lowest average per truck was reported by the North Atlantic and East North Central regions--43,000 miles. This compares with vehicle miles for all trucks in the United States which averaged 10,583 miles in 1960.¹²

The carriers reporting in the study accumulate a little over 3 billion ton-miles. A ton-mile is one ton of cargo carried one mile. Two tons of cargo carried one mile would represent two ton-miles. Table V gives the estimated ton-miles for exempt truckers in the study by region of home office.

¹²Ibid., p. 12.

TABLE V

ESTIMATED TON-MILES FOR EXEMPT TRUCKERS IN STUDY,
BY REGION OF HOME OFFICE, 1960

Region of home office	Truckers reporting	Ton-miles	
		Total	Average per trucker
North Atlantic	135	226,142,416	1,675,129
East North Central	196	338,268,272	1,725,859
West North Central	467	767,453,280	1,643,369
South Atlantic	293	701,908,112	2,395,591
South Central	205	590,104,304	2,878,558
Western	218	485,947,408	2,229,117
Total	1,514	3,109,823,792	2,054,045

Source: Mildred R. DeWolfe, For-Hire Motor Carriers Hauling Exempt Agricultural Commodities--Nature and Extent of Operations, Marketing Economics Division, United States Department of Agriculture, Marketing Research Report No. 585 (Washington: Government Printing Office, 1963), p. 40.

CHAPTER V

METHODS OF OPERATIONS

Because of changing times and changing terminology, it is necessary to divide this chapter into two parts. The first part will discuss the "gypsy" or itinerant trucker and his methods of operation, both legal and illegal. The second section will be much broader and will be concerned with the so-called "gray area operations."

The term "gypsy" or itinerant trucker usually refers to an owner-operator of one or maybe two trucks. These owner-operators are so named because they are steadily on the move all over the country and seldom do they operate out of any fixed office. These truckers are not regulated by the Interstate Commerce Commission as to entry into business, routes they can travel, or the rates they can charge. The "gypsy" is subject to the safety regulations imposed by the ICC on all carriers who move in interstate commerce. Legally these truckers haul primarily commodities which are exempt under Section 203 (b) (6) of Part II of the Interstate Commerce Act.

"Gray area operations" are more difficult to define and classify. The "gray area" is defined in many different ways. Some of the more common definitions are as follows.

"The 'gray area' exists between genuine private carriage, on the one hand, and regulated for-hire transportation on the other."¹ "Simply, the 'Gray Area' is illegal for-hire transportation in any form."²

An illegal carrier is a for-hire trucker who is operating in violation of the Interstate Commerce Act, which prescribes the regulations of the transportation industry. He may be an operator of one broken-down truck, or he may be the head of the transportation division of one of the largest corporations with scores of gleaming tractor-trailers roaring down the highways. Both have one commodity to sell: cut rate transportation. Usually, they got into the transportation business because of two exemptions in the Interstate Commerce Act:

(1) Any citizen can operate his own truck to carry his own products.

(2) Rates for carrying agricultural products and certain other items are specifically exempted from regulation by the Interstate Commerce Commission. And anyone can go into the for-hire transportation business hauling "exempt" commodities without I.C.C. approval.³

From the above definitions and explanations, it can be seen that the "gray area" takes in a wide area of trucking

¹Interstate Commerce Commission, Gray Area of Transportation Operations, Bureau of Transport Economics and Statistics, Statement No. 6010, File No. 51-D-7 (Washington: Government Printing Office, 1960), p. 1.

²"Gray Area, U. S. A.," Fleet Owner, LVI (August, 1961), p. 61.

³T. F. Dillon, "Beware of Illegal Trucking," Purchasing, LI (September 25, 1961), p. 85.

operations. There are several reasons why we need to include the "gray area" of motor carriage in a paper concerned primarily with the agricultural exemption and the truckers who carry these agricultural products. One reason for its inclusion is that a few years ago the illegal operations of the "gypsy" or itinerant truckers were discussed by themselves. Today all illegal trucking operations are grouped together under the heading of the "gray area."

The second reason for including the "gray area" is that by its definition it was found that the "gray area" includes any illegal operations of private carriers. Through the continued expansion of the agricultural exemption by legislative changes and liberal court interpretations, the broad exemption has had a direct effect on the increased number of "gray area operations."

The third reason for inclusion is that private carriers often carried exempt agricultural products on back hauls and for this reason the "gray area" should be included when discussing carriers of exempt agricultural products.

PART I

GYPSY OR ITINERANT TRUCKERS

As mentioned above, the term "gypsy" or itinerant trucker refers to an owner-operator of one or two trucks.

These truckers are free from economic regulation by the Interstate Commerce Commission and can operate over any route they choose and charge any price that they can get for their services.

I. GROWTH AND GROWTH POTENTIAL

The itinerant or "gypsy" was around long before the passage of the agricultural exemption in 1935. Since that time these carriers have continued to grow. "The bootleg trucker got his biggest boost during World War II when transportation of any type was difficult to obtain."⁴ Because of the shortage of carriers, anyone who had or could obtain a truck could find vast quantities of goods to move and no questions were asked. Since that time enforcement has increased, and today it is not as easy to get bootleg traffic; but it is still done on a large scale as will be shown. Many of the truckers who were bootlegging during World War II turned to hauling exempt agricultural products. With such a large number of agricultural carriers after the war, many of these who had been bootlegging during the war found it more profitable to return to this illegal traffic.

⁴"Bootleg Truckers Flourish," Railway Age, CLV, (July 8, 1963), p. 12.

As mentioned earlier, Part II of the Interstate Commerce Act provides for, among other things, an exemption from economic regulations to for-hire carriers of exempt agricultural products. A large segment of the for-hire trucking industry takes advantage of this exemption. The majority of these operators are owner-operators who are the firm's owner, driver, sales manager, and office force.⁵

Although most large trucking firms started from such small beginnings, it is doubtful that such developments will take place in the exempt trucking industry for several reasons. First, exempt trucking is a high fixed-cost industry. Second, there is freedom of entry and rate making is highly flexible. Thirdly, there is a lack of internal control in the exempt carrier industry.

Traditionally economists have believed that a characteristic of the for-hire motor carrier, which sets it apart from many other forms of business, is that it is a low fixed-cost industry. Other modes of transportation, particularly railroads and airlines, are high fixed-cost industries. In order for us to examine the position of the exempt carrier industry with regards to being a high or low fixed-cost

⁵H. S. Norton, "Itinerant Trucker: A Problem in Business Growth," Land Economics, XXXIV (May, 1958), p. 184.

industry, the fixed and variable cost of an exempt for-hire motor truck operator is as follows:

Fixed	Variable
1. Registration fees and licenses for vehicles.	1. Fuel and oil maintenance.
2. Office expense.	2. Drivers' salaries.
3. Garage, storage, office, and loading dock rent or maintenance.	3. Taxes paid on basis of mileage operated or fuel consumed.
4. Salary of owner and principal officers.	4. Tolls, expenses on road, etc.
5. Payments to amortize equipment.	5. Taxes paid on income or profits. ⁶

Items 2, 3, and 4 in the fixed-cost column will be almost nonexistent for the exempt owner-operator. The reason is that he usually has no office expense or rent because he operates either out of his home or a "truck stop." The owner-operator or his wife usually takes care of all book-keeping and other would-be office work. Also the "gypsy" has no or very little garage, storage and loading dock rent, again because he operates out of his home or a "truck stop." Salaries of the owner and principal officers would, of course, go to the owner-operator himself.

⁶Ibid.

If items 2, 3, and 4 amount to very little fixed cost, then what does? The answer is item 5, payments to amortize equipment. A suitable tractor, semi-trailer combination can be purchased with a low down payment with the payments being comparatively large and continuing for a substantial period of time.

"In 1957 a new tractor of a commonly used make could be acquired for \$8,000 to \$12,000, and a non-refrigerated semi-trailer could be secured for \$6,000 to \$8,000."⁷ At these prices a unit would cost between \$14,000 and \$20,000. If a unit say cost \$16,000 and a trucker paid \$2,000 down, this would leave a balance of \$14,000. If financed for 36 months, not including interest, payments would be \$388 per month, and for 24 months payments would run \$582 per month. Under these conditions not many itinerant truckers could even get started in business. Used units can be obtained at a much lower cost than a new unit. Used rigs can be purchased for a very low down payment and financed for many months. Whether the "gypsy" owner-operator purchases a new unit or a used unit, the conditions are the same. The monthly payments on the truck and semi-trailer are a larger fixed cost to the owner operator securing his unit on time payments.

⁷Ibid., p. 185.

Under these conditions the trucker finds that he must faithfully meet his high monthly fixed cost or he will not be able to continue in business. The trucker knows that if his truck sits idle, he still has to make the monthly payments; and as a result he will take a load if it brings in enough to cover the variable cost and make some contribution to his high fixed cost.

Another factor which will probably limit the size of firms within the exempt carrier industry is the freedom of entry into the industry plus the very flexible rate policy. Should a firm or a group of firms start showing a large profit, one would find that there would be a great increase in the number of firms in the industry; and this increase in competition combined with the flexible rate policy would drive the rates down to the point of only a minimum return.

The third factor which may limit the size of firms in the exempt motor carrier industry is lack of internal control. Because "gypsy" truckers are not regulated as to the route they can travel, when an owner-operator begins to operate more than one or two trucks he has the problem of control. He himself, still driving, is seldom able to be at "headquarters" for any length of time. If operating three or four trucks, his organization is still too small to hire a full-time office worker so the owner-operator has to try

to keep records on four trucks that are ranging far and wide around the country.⁸

II. OPERATIONS . . . LEGAL OR ILLEGAL?

Often the question arises as to whether or not a movement of goods by an itinerant trucker is legal or illegal. This question centers around two main areas, namely "trip-leasing" and "buy-and-sell agreements." Another area often in question has to do with the safety requirements set forth by the Interstate Commerce Commission for all carriers who operate in interstate commerce. Safety violations are not unique with the itinerant or "gypsy" trucker, but these safety violations will be discussed at this point since the itinerant trucker is considered the most pronounced safety violator on the American highway today.

An operation, where little doubt of its legality could exist, provided the safety requirements are met, would be as follows. An exempt carrier would move a previously determined exempt commodity from his home office to some point in the United States where the carrier would deposit the load, pick up another load of previously determined exempt commodities and carry this load to another section of the country.

⁸Ibid., p. 186.

As an example, suppose the home office of a "gypsy" trucker was in the Rio Grande Valley of Texas. From this point he picked up a truck load of fruit and hauled this cargo to Cape Cod, Massachusetts. At Cape Cod, the fruit was unloaded; and the trucker picked up a load of fresh frozen fish to be carried to Lincoln, Nebraska. In Lincoln, the fish was unloaded; and at this point the "gypsy" trucker picked up a load of wheat to be carried to Houston, Texas. The wheat was unloaded in Houston where the trucker picked up a load of rice to be carried back to his home region in the Rio Grande Valley. As stated before, the legality of this operation could hardly be questioned provided the safety requirements were met.

The above example operation, where a trucker carries an exempt load to its destination and there picks up another load of exempt commodities, is the simplest in theory but the hardest in practice. By hardest in practice the writer means that many times the "gypsy" cannot find another load of exempt commodities at destination. Here is where the problem of legality really begins.

TRIP-LEASING

When the "gypsy" trucker reaches the point of destination with a load of exempt commodities and cannot find another load of exempt commodities, "the gypsy trucker

follows the practice of leasing his truck to some regulated carrier to haul a load to a point covered by the latter's operating authority."⁹ "Leasing arrangements which are for a period of time of less than thirty days are now called 'trip-leasing.'"¹⁰ The practice of trip-leasing a vehicle to a regulated carrier is legal as is explained by the following statement.

Section 204 (f) (2) says that a (for-hire) carrier engaged in exempt transportation upon the completion of his exempt haul may lease his equipment to a regulated carrier for a trip anywhere in the United States (depending on the lessee carriers rights of course).¹¹

In order for a trip-lease to be legal, the lessor company has to have full control of the leased driver and vehicle. As is pointed out by the following remarks, this is not always the case. It is in this area that the disputes as to the legality of the trip-lease arrangement arise.

Abuses have grown up in the motor-carrier industry in connection with the leasing of equipment by motor carriers from others, particularly from for-hire carriers that are

⁹Russell E. Westmeyer, Economics of Transportation (New York: Prentice-Hall, Inc., 1952), p. 427.

¹⁰Charles A. Taff, Commercial Motor Transportation (third edition; Homewood: Richard D. Irwin, Inc., 1961), p. 287.

¹¹Forney A. Rankin, Masquerade In Farm Motor Transportation (Washington: American Trucking Association), p. 11.

exempt from regulation, such as the haulers of agricultural products.¹²

Although trip-leasing of equipment enables a carrier to supplement his own supply of vehicles and also allows "gypsy" and private carriers to obtain back-hauls, still serious abuses arise. These abuses are centered in four areas: (1) informality of lease contracts, (2) lack of control over drivers, (3) loss on contact with shippers, and (4) avoidance of carrier responsibilities.¹³

Informality of Lease Contract. Because of the informality of the hiring arrangement, loss of control which for-hire carriers should exercise over the transportation services they authorize has taken place. Many trip-lease contracts are made by phone, and the regulated carrier has no way of knowing if the itinerant's truck is in safe operating order. Also the authorized carrier does not know if the lease driver has had the amount of rest required by the ICC safety standards.

¹²D. Philip Lockin, Economics of Transportation (fifth edition; Homewood: Richard D. Irwin, Inc., 1960), p. 695.

¹³William J. Hudson and James A. Constantin, Motor Transportation (New York: The Ronald Press Company, 1958), p. 552.

Another problem of the informal lease contract is in regard to liability. If there is an accident, is the authorized carrier or the lease driver responsible? Many times the "gypsy" who leases his unit has no insurance. The real loser is usually the public.

Lack of Control Over Drivers. After the lease contract is negotiated, the lessor company has very little control over the route taken by the owner-operator although the driver is supposed to adhere to the routes of the lessor company. A common complaint against the itinerant trucker who has leased his unit is that he will take the most direct route, regardless of the authorized carriers operating authority. Other complaints are that they ". . . drive while drunk, carry liquor in the cab, transport unauthorized persons (particularly women), operate unsafe equipment, and charge gasoline and tires to the carriers without their authorization."¹⁴

Loss of Contact With Shippers. Owner-operators sometime take over and control traffic of the authorized carrier. After the "gypsy" delivers his load to the shipper, he becomes acquainted with the shipper. In the future, instead of hauling under lease to an authorized carrier, the "gypsy" contacts the shipper directly and leases his

¹⁴Ibid., p. 553.

unit to the shipper and moves in interstate commerce as a so-called private carrier. The result of this is evident-- financial loss to the authorized carrier. There are some shipping clerks and traffic officials of large companies who prefer to deal directly with the itinerant owner-operator instead of dealing with an authorized carrier.

One Chicago steel firm, for example, was using over 600 'bull shippers', who truck cattle to the Windy City, to haul steel back to Iowa, Looking for a return haul to avoid going back empty, these truckers would haul shipments for 75 cents a hundred pound when the I.C.C. approved rate was \$1.10,¹⁵

The article goes on to say that these movements were via shipper lease arrangements.

Avoidance of Carrier Responsibilities. Another abuse which has developed out of trip-leasing is the avoidance of responsibilities by regulated carriers. These authorized carriers sometimes become dependent on leased equipment. Then in seasons of the year when the owner-operator can find return hauls in the form of exempt agricultural products then his vehicle is not available for lease. Thus the authorized carrier finds himself short of equipment and cannot render the services that are expected of him.

¹⁵Ralph E. Winters, "Bootleg Truckers: ICC, States Aim to Curb Unlicensed Hauling," The Wall Street Journal, XXVI, No. 42 (August 30, 1960), p. 4.

Another problem is that some authorized carriers pay itinerant owner-operators on a percentage basis and thus try to deny responsibility for their claims on the grounds that each lease driver is responsible for his individual actions.¹⁶

BUY-AND-SELL AGREEMENTS

The second most prevalent type of illegal trucking by "gypsy" or itinerant trucker is the so-called buy-and-sell agreement. Under a buy-and-sell agreement the trucker and the shipper get together, and the shipper supposedly sells the cargo to the trucker. The "gypsy" trucker then carries the goods to the customer of the shipper and there the trucker sells the cargo at a predetermined price. The difference between the trucker's supposed buying price and the supposed selling price is the amount the "gypsy" trucker is paid for hauling the goods. Should the trucker be stopped during the haul, he would show his paper title to the cargo and claim he was a private carrier hauling his own goods.

Here is how a buy-and-sell agreement may work in practice. Suppose a "gypsy" is operating out of Florida where fruit and vegetables are hauled year round to Pittsburg. If a cargo is needed for return hauls to Florida, one might make a deal with a firm in Florida that uses

¹⁶Hudson and Constantin, op. cit., p. 554.

steel. Following the instruction given by the steel customer, one would buy steel in Pittsburg for \$130 per ton. The steel would be carried back to Florida as a back haul and sold to the customer for a predetermined price of \$135 per ton. The difference of \$5 per ton would be the "gypsy's" fee for hauling the steel. Should the gypsy have been stopped on the return haul, he would have shown the inspector the bill of lading or sales slip and claimed he were a private carrier hauling his own goods.

A rather amusing example of a buy-and-sell arrangement appeared in the August 30, 1960, edition of the Wall Street Journal. It is as follows:

Authorities stopped another trucker with a load of cantaloupe he claimed to have purchased from a farmer in Texas. Doubting that the trucker really owned the melons, the investigator called the Texan long distance. The farmer supported the trucker's story.

'Well, I'm relieved to hear that they're his own melons,' replied the quick-thinking investigator, 'because that guy is drunk and giving them all away.'

'Lock that man up!' shouted the enraged farmer, 'Those are my melons.'¹⁷

Enforcement of trip-leasing and buy-and-sell agreements will be discussed in the next chapter.

¹⁷Winters, loc. cit.

BACK HAULS OF NONEXEMPT COMMODITIES

One type of operation by exempt carriers which has, and always will be considered illegal, is the back haul of products previously determined to be subject to economic regulation. Although there is little question about the legality of such an operation, it is often very difficult to spot. Today the "gypsy" trucker is becoming very ingenious in his disguises. Three examples should point out ingenuity of subterfuges used by exempt carriers.

In Illinois, a trucker was found to use washable paint to put a new name on the cab of his truck each time he hauled a different load. He hoped that when stopped and checked, authorities would think that the truck was owned and operated by the equipment maker whose name the trucker had carefully painted on the door of his cab.¹⁸

Another often used subterfuge is for a trucker to place crates of vegetables in the back end of the trailer while the front of the trailer is loaded with nonexempt commodities. Here the trucker hopes that when stopped, inspectors will look in the back, see the crates of vegetables and assume that the entire trailer is loaded with vegetables.

Another trucker was stopped in Kentucky. He had iced down a load of steel in order to elude authorities.

¹⁸Ibid.

When caught, the trucker had the steel covered with a layer of straw and a coating of ice trying to make it look like he were carrying a load of fresh vegetables.

I. SAFETY

As mentioned earlier, the itinerant or "gypsy" trucker is by far the biggest safety hazard on the American highway today. Before discussing the safety violations of the "gypsy" truckers, one must first know and understand the safety regulations prescribed by the Interstate Commerce Commission. The following regulations do not apply exclusively to the "gypsy" or itinerant trucker but instead apply to all trucks that move in interstate commerce. Due to the length of the safety regulations, the writer will only discuss the eight main areas of the ICC safety regulations.¹⁹

SAFETY REGULATIONS

Part 190--General. This section gives the legal definitions of the terms used in the regulations. It also gives a number of general policy statements and also lists the district field offices of the ICC.

Part 191--Qualifications of Drivers. All drivers must pass minimum mental and physical requirements. Each

¹⁹Interstate Commerce Commission, Motor Carrier Information Bulletin, General Information No. 3 (Washington: Government Printing Office, 1959), pp. 1-2.

driver must be at least 21 years of age in order to operate a truck in interstate commerce. Each driver must have and keep with him a copy of a physician's certificate of physical examination and "the driver must be re-examined every 36 months."²⁰

Part 192--Driving of Motor Vehicles. This section sets forth rules of the road such as the proper control of speed, checking to see that equipment is in good working order, and requirements for stopping certain vehicles at railroad crossings and draw bridges. Also in this part are the requirements for placing emergency signals for stopped or disabled vehicles, safe loading regulations, and regulations against transporting unauthorized persons.

Part 193--Parts and Accessories Necessary for Safe Operation. This section of the regulation covers the placement, installation and specification of lighting devices, reflectors, electrical equipment, brakes, safety glass, fuel systems, coupling devices, heaters, emergency equipment and sleeper berths.

Part 194--Reporting of Accidents. All accidents involving death, injury, or property damage (including cargo) totaling \$250 or more must be reported to the

²⁰Taff, op. cit., p. 529.

Interstate Commerce Commission. Any accident in which a fatality occurs must be reported to the Commission immediately by telephone or telegraph.

Part 195--Hours of Service of Drivers. A driver may not operate a truck for more than 10 hours and after this time must have 8 hours rest before going on duty again. A driver should not be on duty more than 60 hours during any 168 consecutive hour period. Exceptions do exist for adverse weather conditions and for drivers with sleeper-cabs. Drivers must keep a daily "Driver Log" which shows the drivers entire activities during each 24 hour period.

Part 196--Inspection and Maintenance. This section requires that every motor vehicle be kept in safe operating order. This covers such items as inspection, maintenance, repairs, lubrication, and the recording of any defect or deficiency in the driver's trip report.

Part 197--Transportation of Explosives and Other Dangerous Articles. "There are many such regulations, such as the markings to be placed on the motor vehicles, precautions while loading and unloading, and specific directions to drivers concerning precautions to be observed in such operations."²¹

²¹Ibid., p. 531.

These are the safety regulations for the itinerant and all trucks which operate in interstate commerce. Now for some of the most common safety violations.

SAFETY VIOLATIONS

There are two main reasons why the itinerant trucker is such a pronounced safety hazard. One is that because he operates in such a competitive industry, it is necessary, if he is to make any profit, to cut corners everywhere possible. This is often in areas of safety. The second reason is that many itinerant truckers are not even aware that they are subject to the safety requirements set forth by the Interstate Commerce Commission. This is supported by the following statement. "It is estimated that nearly 46,000 carriers have not been formally notified that they are subject to (safety) regulation" ²² In the same paragraph it says that about 2,500 truckers a year are being notified. At that rate it will only take 20 years for all the present carriers to be notified, but by that time there may be another 46,000 carriers in the industry who would not know that they were subject to ICC safety regulations.

The safety violations of the itinerant trucker centers in two main areas; namely, violations having to do

²²Ibid., p. 528.

with the length of service regulations and violations of the regulations governing equipment. Other safety violations will also be mentioned in this chapter.

Length of Service Violations. From the safety regulations presented in this section, one knows that the law requires a minimum of 8 hours rest after each 10 hours of driving. Also the driver is required to record in his daily "Driver Log" his entire activities for each 24 hour period. These are the federal regulations, but they are very often violated by the "gypsy" or itinerant trucker in his effort to make his operation profitable as can be seen from the following statement. "To stay in business, the average gypsy must push his rig long hours past the point of fatigue. Chances are he breaks the ICC hours of service regs every time out."²³

In order for these truckers to drive many hours without rest, they often rely on "stay-awake" pills called benzedrine or "bennies." Although bennies are illegal to sell without a prescription, it is not hard for a trucker to purchase these "stay-awake" pills. "Bennies" are often sold around truck stops either by truck stop employees or by truckers who buy them in large quantities to resell.

²³"Gray Area, U. S. A.," op. cit, p. 68.

If a driver drives longer hours than are prescribed in the safety regulations, it then becomes necessary for him to alter his "Driver Log." After alteration, the "Driver Log" will show, just in writing, that the driver has not driven more than 10 hours without 8 hours rest.

Many reports are given of drivers who have crashed their trucks during their effort to drive long hours without rest. Two such reports will be given here.

The fifteen-ton tractor-trailer roared through the Alabama night, a youth at the wheel fighting to keep awake. For all his weariness, a mile-a-minute clip. He thought he was on the last lap of a 1500-mile journey from Minnesota to Jacksonville with a load of eggs for Florida's breakfast tables. But Larry Allen Rowley fell asleep at the wheel, the truck plummeted off the road near Fayette, Alabama, and it became for him a nonstop trip to eternity.²⁴

A bottle of pills was found by the boy's crushed body. Later a letter was discovered which Larry had written to his younger brother just before the accident. Parts of the letter are as follows.

. . . I am pretty sleepy now because I have driven 42½ hours now without any sleep. I only stop to eat and fuel up, and then away I go again. I am taking a lot of pills to keep me awake.²⁵

²⁴Arthur L. Davis, "Death In Small Doses," The Saturday Evening Post, CCXXVIII (January 21, 1956), p. 25.

²⁵Ibid., p. 89.

Often shippers are guilty of promoting this type of activity because they will pay an itinerant trucker a larger fee if he delivers the cargo in a certain number of hours. After this predetermined time, the fee the driver receives becomes less and less. The majority of the time, the only way the driver can receive the larger fee is to drive straight through without any rest.

This second report is somewhat lighter and is almost humorous.

A big tractor-trailer was found overturned in a ditch, with the driver snoring peacefully in the sleeper berth. He was awakened with difficulty and, when questioned, said, 'Benny and I were driving along very nicely and I got very sleepy. Benny was doing so well at the wheel, I decided to crawl up in the bunk and let Benny drive.'²⁶

Many other reports are not this humorous. Cases are reported where drivers have gone to sleep at the wheel and killed many innocent people.

When 26 accident reports were analyzed, it was found that in 15 of the 26 cases, driver fatigue, resulting from driving without rest in excess of legal driving hours was found to be the causative factor. The 26 accidents resulted in 76 deaths and injuries to 185 persons.²⁷

²⁶Ibid.

²⁷"Illegal Trucking and Protection of the Public," Traffic World (June 16, 1962), p. 5.

Equipment Violations. In efforts to make operations profitable, itinerant truckers often fail to make the necessary repairs to their trucks. The end result is too often a tragic accident.

In the 26 accident reports which were mentioned above, it was reported that "eleven of the accidents were attributed partly or wholly to mechanical defects."²⁸

A few years ago, it was estimated that "nine out of every 10 big trucks on the highways today are operating with one or more safety defects."²⁹ That was the result of a 1957 nationwide road check of over 11,800 vehicles that were operating in interstate commerce.

"The principle violation, the ICC reported was in braking systems--of the trucks inspected over 6,000 had brake defects."³⁰

Other Violations. Another safety violation characteristic of the itinerant trucker is the operation of vehicles by underaged and unlicensed drivers. Again referring

²⁸Ibid.

²⁹"ICC Safety Check of Big Trucks Find Violations in 9 out of 10," Business Week, (June 22, 1957), p. 75.

³⁰Ibid.

back to the previously mentioned 26 accident reports which were investigated, it was found that "in four cases, under-aged or unlicensed drivers were at the wheel."³¹

Weight violation by the itinerant trucker is another common practice. In a "runaway" truck accident which took place in Pennsylvania, the investigation reported that "the driver was not qualified to drive heavy equipment in mountainous terrain, and the trailer was badly overloaded in relation to the size of the trailer."³²

It is not unusual to hear a report of a large trailer truck that has fallen through some back-road bridge. Many times the reason the big truck is traveling the back-road is because he knows that either the ICC or state authorities have a weight check ahead on the main highway and that his truck is overloaded. Thus he makes an effort to get around the weight check.

In concluding Part I on the operations of itinerant or "gypsy" truckers, the following two passages give very good descriptions of the reason for and the type of operation that is characteristic of the itinerant trucker. The first

³¹"Illegal Trucking and Protection of the Public," loc. cit.

³²Rupert L. Murphy, "Problem of Unregulated Carriers," Symposium (Common Carrier Conference, Irregular Route, 1957), p. 10.

concerns testimony given to the Interstate Commerce Commission by itinerant truckers, and the second is nothing more than the words of a ballad written about an itinerant trucker.

In general the itinerant truckers who testified in these proceedings contended that, in order to have any hope that their operations would prove profitable, they were required to operate in complete disregard of Commission regulations, state weight restrictions and traffic laws, and the limitations of the operating rights of the lessee carrier. Overloading, violation of the hours of service requirements, and taking the most direct route available were regular features of many operations.³³

6 DAYS ON THE ROAD

Well, I pulled out of Pittsburg rolling down that eastern seaboard.

I got my diesel wound up and she is a running like a never before.

There is a speed zone ahead all right. I don't see a cop in sight.

Six days on the road and I'm gonna make it home tonight.

I got me 10 forward gears and a Georgia overdrive.

I'm taking little white pills and my eyes are open wide.

I just passed a "Gimmy" and a "White," I been passin' everything in sight.

Six days on the road and I'm gonna make it home tonight.

Well it seems like a month since I kissed my baby good-by.

I could have a lot of women but I'm not like some of the guys.

³³Ibid., p. 14.

I could find one to hold me tight but
I could never make believe it's all right.

Six days on the road and I'm gonna make
it home tonight.

ICC is checking on down the line. Well,
I'm overweight and my log book is way behind.

But nothing bothers me at night. I can
dodge all the scales all right.

Six days on the road and I'm gonna make
it home tonight.

Well my rigs a little old but that don't
mean she's slow.

There's a flame from her stack and that
smoke is blowing black as coal.

My home town is coming in sight, if you
think I'm happy you're right.

Six days on the road and I'm gonna make
it home tonight.

Six days on the road and I'm gonna make
it home tonight.

Six days on the road and I'm gonna make
it home tonight.³⁴

For the reader curious enough to do so, a copy of
this record can be found in the appendix and is available
for playing.

PART II

GRAY AREA OPERATIONS

Going back to our definition of the gray area at the
beginning of this chapter, one finds that the "gray area"
includes illegal trucking in any form, whether it be by the

³⁴Song written by Green and Montgomery.

"gypsy" trucker or by big private carriers. From this definition, one can conclude that all illegal activities of the "gypsy" or itinerant trucker comes within the "gray area" but all such operations are not practiced solely by the "gypsy" or itinerate trucker.

Because today's connotation of the term "gray area" has overtones of private carriage, we will again mention "buy-and-sell agreements" and "trip-leasing," both of which were discussed in Part I of this chapter which dealt exclusively with the itinerant trucker. The reason for again discussing these two areas is that they were both a little different when applied to and used by private carriers.

All practices discussed in this section are not necessarily illegal, but they are all somewhat questionable.

Trip-Leasing. The private carrier is similar to the "gypsy" or itinerate in that they are both exempt from economic regulation by the Interstate Commerce Commission, given certain restrictions. A private carrier is exempt from economic regulation when he is carrying his own goods or when he is carrying commodities which come within the agricultural exemption. He is not allowed to carry goods which are regulated by the ICC.

The trip-leasing activities of the private carrier are very similar to that of the itinerant trucker in that

when a load is delivered, the private carrier can lease his vehicle to a regulated carrier. If leased to a regulated carrier, such an activity is legal provided the regulated carrier has complete control of the driver and vehicle during the lease and further provided that the safety requirements are met and that the routes of the regulated carriers are adhered to during the lease.

One major difference between the leasing practices of the itinerant trucker and the private carrier is that generally the private carrier leases his equipment to a shipper and not to a regulated carrier as does the itinerant trucker. When an itinerant trucker trip-leases to a regulated carrier, the traffic legally remains in the hands of the regulated carrier since he is supposed to have complete control of the shipment. In the case of a trip-lease by a private carrier to a shipper, the traffic remains either in the hands of the shipper or the private carrier. In either case, "under shipper lease of vehicle with driver the traffic is lost by that industry to unauthorized carriers."³⁵

Illegal trip-leasing practices account for about 45% of the violations in the "gray area." This fact is born out by the following statement. "According to the ICC

³⁵Interstate Commerce Commission, Gray Area of Transportation Operations, Statement No. 6010 (Washington: Government Printing Office, 1960), pp. 29-30.

study, illegal leasing arrangements account for the largest number of violations--about 45%."36

Buy-and-Sell Arrangements. The buy-and-sell agreements of the itinerant trucker and the private carrier are very similar. Both supposedly buy the goods and claim that they are private carriers transporting their own goods. In order to cut down on this type of operation, the Interstate Commerce Commission began to use what is known today as the "primary business test." This applies particularly to private carriers. Basically the "primary business test" says that a private carrier has to prove that the cargo he is carrying is in his primary line of business. It is through the "primary business test" that the ICC determines whether a trucker is a private carrier or a for-hire carrier.

Here is how the "primary business test" would work. For example, suppose that the private carrier is a furniture manufacturer. He is carrying his products from his factory to various points in the United States. Upon delivery the private carrier hates to return to the factory empty, so he looks for a back haul. Suppose the only load the private carrier can get is a load of steel. In order to try to circumvent the authorities, the carrier enters into a buy-and-sell agreement where he supposedly buys the load of steel

36"Bootleg Truckers Flourish," loc. cit.

which he will sell at its destination. If stopped by the authorities, the private carrier would show the receipt for the steel and claim he were carrying his own goods. This would have probably worked before the advent of the "primary business test." Today the private trucker would have to prove, in order to avoid prosecution, that the carrying of steel was in his ordinary or primary line of business. For a furniture manufacturer, this might be a difficult task.

Bogus buy-and-sell agreements account for roughly 21% of the illegal trucking activities in the "gray area."³⁷

Illegal Trucking by Exempt Haulers. This portion of the "gray area" is characterized, as was discussed in Part I, by the back-hauling of economically regulated goods by "gypsy" or itinerant truckers who are primarily engaged in the transportation of commodities coming within Section 203 (b) (6) of the agricultural exemption. This type of illegal operation accounts for 12% of the "gray area."³⁸

Unlawful Hauls by Regulated Carriers. Illegal hauls by regulated carriers amount to about 5% of the "gray area" activity.³⁹ This form of illegal operation is characterized by the movement of commodities by regulated carriers which

³⁷Ibid.

³⁸Ibid.

³⁹"Gray Area U. S. A.," op. cit., p. 66.

are not covered by their operating rights or the movement of commodities beyond territories granted in the carriers operating rights. This type of illegal operation is kept down to a minimum because of the close check the Interstate Commerce Commission has on all regulated carriers. Another factor which keeps this type of operation down is that if caught in such an activity, a regulated common motor carrier may lose his operating certificate which was granted by the Interstate Commerce Commission.

Phony Shipper Associations. This is a rapidly growing area in which some groups try to get around federal regulation. "Shipper associations are exempt from regulation as for-hire carriers if they band together without profit, to take advantage of volume freight rates."⁴⁰ Such groups are subject to federal regulation as freight forwarders if they solicit business for profit.

Pseudo-Farm Cooperatives. Farm cooperatives are exempt from federal regulation and enjoy certain special privileges under the law with respect to the trip-leasing of their equipment for the return haul.

One enterprising group which was turned down in its bid to become a common carrier decided to avail itself of

⁴⁰Ibid.

privileges of a farmers cooperative. They found it easy to qualify as a "farmer" according to the definition of a farmer as prescribed by the United States Census. The definition is as follows: "Ownership of three areas of land and the sale of \$150 worth of farm crops annually."⁴¹ According to the definition, it was easy for each member of the group to qualify as a farmer. The group applied to the state for incorporation as a farm cooperative. Since all legal requirements were satisfied, the charter was granted. Under the guise of a farm cooperative, membership of this group included meat packers, tanners, chain stores, hardware stores, corrugated and tin box manufacturers.⁴² Legal?

Shady Brokers. The shady broker is the "middle man between the shipper looking for a cut-rate deal and the not-too-particular trucker."⁴³ He specialized in illegal transportation brokerage. The broker arranges "buy-and-sell deals, shipper leases, contracts loads of exempt commodities and sometimes arranges loads of nonexempt goods to be carried by a "gypsy" or itinerant trucker.

⁴¹Forney A. Rankin, "The Farm Exemption," American Cartagemen and Heavy Haulers (July, 1963), p. 25.

⁴²Ibid.

⁴³"Gray Area U. S. A.," loc. cit.

Many of the shady brokers operate out of truck stops. This is not to say that most truck stops house shady brokers because they do not. The shady brokers have been successful to the extent that truck stops in general have been given a bad name.

The operation of a shady broker works something like this. A shipper may contact the broker and inform him that he has a load going to a certain place. The broker will then be on the lookout for a trucker heading in that direction. Sooner or later a trucker will be located, and the load and the trucker will be matched up.

There are many more devices used by "gray area" truckers than have been discussed in this chapter. All have the common characteristic of trying to circumvent federal regulation. To list all devices used by "gray area" truckers would be quite lengthy. Only the most numerous and most popular methods have been discussed in this part.

CHAPTER VI

THE EFFECT OF THE AGRICULTURAL EXEMPTION ON REGULATED CARRIERS

Estimates as to the volume of traffic and revenue lost by regulated motor carriers as a result of the agricultural exemption are not available. Most experts indicate that this loss probably amounts to billions of dollars annually. The following pages should give the reader some idea of the vastness of the loss suffered by the regulated motor carrier.

The agricultural exemption has had and still does have both a direct and an indirect effect on the motor carriers who are subject to economic regulation. In both cases the effect has been profound.

DIRECT EFFECT

The agricultural exemption has had a direct effect on regulated motor carriers because of the expansion of the exemption due to legislative changes and court interpretations which have been made.

As mentioned earlier, when the agricultural exemption became law in 1935, the intent of Congress was to provide farmers and ranchers with a low cost, flexible form of transportation. The exemption was not intended as a device which

would take traffic away from the regulated motor common carriers and thus weaken our national transportation system.

From 1935 to 1958, all changes in the wording of Section 203 (b) (6) had the effect of broadening the scope of the exemption. This, of course, resulted in the loss of traffic which before had been carried by the regulated carriers. During this same period of time, any proposal or amendment presented in Congress which tended to restrict the scope of the agricultural exemption in any form met with failure.

The Motor Carrier Act of 1958, for the first time, tended to limit the expansion of the agricultural exemption by incorporating into the Act the Interstate Commerce Commission's Ruling No. 107. The commodities listed in the administrative ruling were declared to be exempt or not exempt. At the same time, the ruling excluded from exemption frozen fruits and berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, hemp, wool imported from any foreign country, wool tops and noils and wool waste (carded, spun, woven, or knitted).¹ These were items which, before the ruling, were considered to be exempt agricultural products.

¹Celia Sperling, The Agricultural Exemption in Interstate Trucking: Developments in 1957-1958, Marketing Research Report No. 352 (Washington: Government Printing Office, 1959), p. 3.

Thus not only did Ruling No. 107 limit the expansion of the Section 203 (b) (6), but it also tended to narrow the scope of the exemption by declaring previously exempt commodities to be nonexempt.

From the time of passage of the agricultural exemption until 1958, all cases that went to court seeking a ruling on whether or not certain commodities came within Section 203 (b) (6) of the exemption, resulted in a ruling that tended to broaden the scope of the agricultural exemption. Each time the courts handed down a liberal ruling, declaring that a certain commodity came within the exemption, the result was loss of traffic and revenue by the regulated motor carriers to exempt carriers. This trend continued from the late 1930's until 1958. During that period of about 20 years, many cases went to court and the decisions resulted in loss of much traffic by the regulated carriers.

Since the incorporation of Ruling No. 107 into the Motor Carrier Act of 1958, the number of cases in the courts have been fewer. Because the commodities listed in Ruling No. 107 were not exhaustive, there will still be occasion for determination by the Interstate Commerce Commission and the courts on the status of other commodities of agricultural origin not listed in the ruling.

INDIRECT EFFECT

The indirect effect of the agricultural exemption on the regulated common motor carrier has been more detrimental than has the direct effect. This is to say that the indirect effect of the exemption has resulted in a considerably greater loss to the regulated motor carriers through the diversion of larger quantities of traffic to nonregulated motor carriers. A great portion of this loss has been via the increase in private carriage.

On first thought, one would think that the agricultural exemption could and would have very little effect on the increase in private carriage. This is not the case as will be pointed out in the following paragraphs.

Any businessman who decides to go into private trucking of his own goods must do so because he believes he can reduce his over-all cost of operations. A private trucker is no different than a regulated trucker in that "in order to make a trucking operation pay off, it is necessary to handle traffic both going out and coming back."² It is in this area of back-haul traffic that the agricultural exemption has created the growth in private transportation.

As section 203 (b) (6) of the exemption was continually expanded through legislative changes and court decisions, it

²T. F. Dillion, "Beware of Illegal Trucking," Purchasing, LI (September 25, 1961), p. 85.

made available more back-haul traffic for private carriers. With more back-haul traffic available, many private trucking operations which were before unprofitable now sprang into action. Most firms which began carrying their own goods consisted of large manufacturers who had been supplying the regulated motor carriers with large quantities of high-grade traffic. The result has been the loss of a large volume of the most lucrative traffic which was previously carried by regulated common motor carriers but has now been lost to private carriage due to the agricultural exemption.

Another area in which the regulated carriers have been hurt is in less-than-truck-load (LTL) traffic. There is nothing in the statute books which says that once a firm begins carrying its own goods as a private carrier that it has to carry all of its own goods. Small, unprofitable loads are not carried by the private carrier as is pointed out by the following statement. "Gray area truckers aren't much interested in more difficult and costly-to-handle LTL freight."³ For this LTL traffic, the regulated motor carrier is called upon. Even though this LTL traffic is unprofitable, the regulated motor carrier is required by law to serve the general public on a nondiscriminatory basis.

³"Gray Area, U. S. A.," Fleet Owner, LVI (August, 1961), p. 62.

Many times this means that the regulated motor carrier has to carry the unprofitable traffic of the private carrier.

The effect of the agricultural exemption is quite clear. It has lead to an increase in private carriage. This increase in private carriage has resulted in the loss of high-grade traffic, leaving the regulated motor carrier to carry the low-grade, unprofitable traffic. The end result upon the regulated motor carriers has been the loss of revenue and profits.

Faced with this situation, some of the regulated motor carriers have been forced out of business because the loss of traffic and revenue was too great. Others, in an effort to offset the loss of traffic and revenue, have had to increase their rates. With higher rates in force, other manufacturers find that it is now profitable for them to begin transporting their own goods and so goes the "snow-ball" in private carriage. This idea is supported by the following statement.

Regulated carriers, . . . , feel the impact in siphoned-off revenues, declining profits. Rates have to be increased-- 'and the general public suffers. If this process is permitted to continue indefinitely, succeeding rate increases will discourage shipper use of regulated carrier service.'⁴

⁴W. A. Ryan, "Bootleg Trucking: Starve It to Death," Railway Age, LIV (May 27, 1963), p. 13.

Combined with the large number of exempt carriers, the increase in the number of private carriers has caused back-hauls to become very competitive. Efforts by private carriers to obtain back-hauls and efforts by exempt carriers to obtain any kind of haul led to many of the illegal operations discussed in Chapter V. This is supported by the following statement.

When a private carrier is unable to fully utilize his equipment in the transportation of raw materials or supplies on the return haul, he is often compelled to resort to some form of questionable for-hire operation if his transportation is to be cheaper than that offered by regular for-hire carriage.⁵

Estimates by the Interstate Commerce Commission indicate that approximately 11.2 billion ton-miles of traffic is annually being siphoned away from economically regulated motor carriers by illegal truckers. This represents about $4\frac{1}{2}$ percent of the total intercity ton-miles of private and for-hire truckers and amounts to a loss of about \$800 million annually in freight revenues.⁶ These estimates by the Interstate Commerce Commission are considered to be conservative as is pointed out by the following statement.

⁵Everett Hutchison, "The Decline of the Nation's Common Carrier Industry" (paper read before the Surface Transportation Subcommittee of the Senate Committee on Interstate and Foreign Commerce, Washington, D. C., March 22, 1961), p. 9.

⁶"Bootleg Truckers Flourish," Railway Age, CLV (July 8, 1963), p. 12.

At the National Conference on Illegal For-Hire Trucking which convened in Washington, D. C., earlier this year, it was estimated that more than 25% of the nation's annual intercity ton-miles is being hauled by illegal motor freight haulers.⁷

Whether the amount of traffic carried by illegal truckers represents $4\frac{1}{2}$ or 25 percent of the total intercity ton-miles, it represents a large loss to the regulated common motor carrier industry. Taking even the more conservative figure, $4\frac{1}{2}$ percent quoted by the ICC, this would ". . . represent the equivalent of the total ton-miles carried last year by the 13 largest motor common carriers of general commodities."⁸

The growth of private carriage and especially illegal transportation means a weakening of the national transportation system. This takes on additional significance when it is realized that our nation's economy is built around a stable common carrier system. In addition, a major part of our national defense is based upon the flexibility and speed of moving vital material by an efficient common carrier network.

⁷Dillion, loc. cit.

⁸Forney A. Rankin, "The Farm Exemption," American Cartagemen and Heavy Haulers (July, 1963), p. 24.

Efforts are being made by the Interstate Commerce Commission and various organizations to curb illegal trucking that is costing the regulated motor carriers millions of dollars annually. The major deterrent to an effective Interstate Commerce Commission regulatory force is lack of manpower. This is supported by the following statements.

As long as the exemption exists, illegal truckers will gamble on hauling manufactured goods figuring the I.C.C. does not have the manpower to check every truck on the highways (and they will be right).⁹

"Despite a pitifully small enforcement staff, the I.C.C.'s stepped-up program against illegal truckers is continuing at an accelerated pace"¹⁰ Even with a stepped-up I.C.C. program, one trucker reported that he has been operating illegally from the North to the South for over 20 years and has never been stopped by an I.C.C. representative.¹¹

Since the Interstate Commerce Commission has not been effective in preventing illegal transportation, various trucking organizations have undertaken plans which they hope will

⁹Dillion, loc. cit.

¹⁰"Bootleg Truckers Flourish," op. cit., p. 13.

¹¹Dillion, loc. cit.

be effective in preventing such illegal transportation. Two of the groups engaged in the prevention of illegal trucking are the Committee on Transportation Practices (COTP) and the Committee Against Unlawful Trucking (CAUT).

COTP is a motor carrier group set up by the Regular Common Carrier Conference, the National Motor Freight Traffic Association, and the Common Carrier Conference-Irregular Route.

With a staff of four investigators and four attorneys, COTP has filed 33 cases with the Interstate Commerce Commission naming over 1,000 defendants. "Nine cases have been heard so far. Five decisions were favorable to COTP, one unfavorable; three are pending."¹² Nine other cases have been dismissed because the defendants went out of business after being disclosed.

Considerable progress is being made by COTP at the state level. One such state is Oregon. Drivers of legitimate regulated motor carriers are furnished with forms which are filled out and sent to the Oregon Public Utility Commission when illegal trucking operations are spotted. When enough evidence is obtained, the case is turned over to the Interstate Commerce Commission for prosecution. In Kentucky,

¹²"Aiming at the 'Gray Area,'" Chemical Week, XC (March 16, 1963), p. 85.

the Department of Motor Transportation now issues licenses to all carriers based in the state. Also, the state of Kentucky now requires all motor vehicles engaged in for-hire carriage and all trucks with three or more axles operated by private carriers to qualify with the department to obtain an identification cab card for each truck in the name of the operator.

The state of Texas has now organized a transportation league which is working for improved legislation dealing with leasing activities and the definition of private carriage.

Other states are also engaged in the prevention of illegal transportation. Idaho now has a law requiring registration of all truckers engaged in interstate operations. A similar bill is now pending in Iowa and Minnesota. Illinois has now adopted new leasing regulations and strengthened many of their older laws. Arizona and Montana have both stepped up law enforcement activities against illegal truckers.

COTP believes that each state should have the following minimum laws:

A law requiring registration of all carriers operating over its highway

Adequate laws and regulations covering the leasing of equipment

An adequate inspection force with the power of arrest.¹³

COTP indicates that there are 16 key states which, if they had the necessary laws and enforcement program, could virtually eliminate illegal trucking. These 16 key states are based on location, population, manufacturing, interstate highway system, and truck registration. The states are Texas, New Mexico, Mississippi, California, New York, Colorado, Illinois, Kentucky, Montana, New Jersey, North Carolina, Tennessee, Ohio, Pennsylvania, Virginia, and Wyoming.

CAUT, the other major organization fighting against illegal trucking, is not solely a motor carrier organization. The groups who have joined forces in this organization include railroads, legitimate truck operators, freight forwarders, and shippers.

CAUT, organized in 1961, has as its purpose "to foster and encourage . . . elimination of unauthorized transportation without impeding legitimate operations of private and for-hire carriers."¹⁴ In order to carry out this goal, CAUT has outlined the following three-point program.

¹³"Bootleg Truckers Flourish," op. cit., p. 14.

¹⁴"Carriers To Fight 'Gray Area' Trucking," Railway Age, CLI (August 21, 1961), p. 9.

To educate shippers and other interested groups about the adverse effects of unauthorized transportation and to encourage increased research in this important area;

To encourage stricter and more effective enforcement of existing laws concerning unauthorized transportation; and

To analyze additional steps to promote enforcement and to combat in other ways unauthorized transport operations.¹⁵

It is the sincere hope of the author that the stepped-up enforcement activities of the Interstate Commerce Commission and programs now in force by COTP and CAUT will be successful in eliminating the illegal trucking which is causing great financial loss to our regulated motor carriers and thus weakening the national transportation system.

¹⁵Ibid.

CHAPTER VII

SUMMARY AND CONCLUSIONS

SUMMARY

It is the purpose of this paper to evaluate the effect the agricultural exemption has had on our regulated common motor carriers. This task was accomplished by gathering all possible material on the agricultural exemption, analyzing this information, and presenting it in organized form.

The study begins by tracing the legislative growth of the agricultural exemption from its inception in 1935 until the present time. In this way the reader is able to see that most changes in Section 203 (b) (6) have tended to expand the scope of the exemption.

In the same manner the judicial history of the exemption was analyzed. By briefing the important cases dealing with the exemption, the reader is able to see how the exemption has been expanded through liberal court interpretations.

The type of commodities legally carried by exempt carriers consists of commodities classified as exempt by the Interstate Commerce Commission's Ruling No. 107. Of these commodities, grain represented the largest total tonnage hauled, and livestock was second. Vegetables represented the largest number of hauls.

In order for the reader to become acquainted with the problem imposed by the exempt carrier, the writer analyzed the typical questionable or illegal operations of these carriers. It was found that the most common form of illegal operation is trip-leasing. Other illegal operations were buy-and-sell agreements, back hauls of manufactured products, and safety violations.

The safety violations of the exempt carriers make them the greatest safety hazard on the American highway. Many reports were available which cite how innocent motorists have been killed as a result of safety violations by these carriers.

It was found that "gray area" operations overlap into the area of our study. For this reason, it was mentioned in this paper. The "gray area" is defined as any form of illegal trucking. "Gray area" operations consist of trip-leasing, buy-and-sell arrangements, illegal trucking by exempt carriers, unlawful hauls by regulated carriers, phony shipper associations, pseudo farm cooperatives, and shady brokers.

The expanding of the scope of the agricultural exemption through legislative changes and liberal court interpretations, along with the growth in illegal operations of exempt carriers, have resulted in the loss of large quantities of high-grade traffic and revenue by regulated motor carriers. This loss of traffic and revenue has forced some

regulated motor carriers out of business. Others have had to increase their rates, and this has led to an increase in private carriage. The end result has been a weakening of our national transportation system.

CONCLUSIONS

1. At the time Congress passed the agricultural exemption in 1935, it seemed to be their intent to provide the farmer and rancher with a low cost, highly flexible form of transportation. From 1935 until 1958, all legislative changes in the wording of the Section 203 (b) (6) tended to broaden the scope of the agricultural exemption. Any proposed amendment which would have tended to restrict the scope of the exemption met with failure. The Motor Carrier Act of 1958 tended to end this broadening trend by incorporating into law the Interstate Commerce Commission's Ruling No. 107. This ruling listed many commodities and classified them as either exempt or not exempt. This ruling also tended to limit the scope of the exemption by removing certain previously exempt commodities from their exempt classification.

2. The judicial history of the agricultural exemption from the late 1930's until 1958 seems to have followed the same broadening trend as did the legislative history.

During this time, almost all court decisions tended to broaden the scope of the exemption. The text applied by the courts which tended to expand the agricultural exemption more than any other test became known as the "continuing substantial identity test." By the use of this test many processed and manufactured products were brought under the exemption. After the incorporation into law of Ruling No. 107, which listed commodities as exempt or not exempt, the expansion of the exemption by the judicial branch of our Government ended.

3. For the United States as a whole, grain represented the highest percent of total tonnage hauled, and livestock ranked second. Various sections of the country deviated from the United States percentages. The highest total tonnage in each section usually represented the commodity produced in the greatest quantity in that region.

4. Exempt truckers reported that vegetables accounted for the greatest number of hauls in the United States. Most originations were within the home region of the reporting truckers. Also about half of all deliveries were within the home region of each trucker.¹

5. Seventy percent of the mileage traveled by the exempt truckers were laden miles, leaving only 30 percent consisting of "dead-head" mileage.

¹For regional divisions see p. 54.

6. The growth of large firms in the exempt carrier industry is unlikely for three reasons. First, the "gypsy" or itinerant trucker has a high fixed cost. Second, there is freedom of entry into the industry, and rate making is highly flexible. Thirdly, there is a lack of internal control in the exempt carrier industry.

7. The exempt carrier industry is characterized by many questionable types of operations. Some of these operations are legal, but most are illegal. These questionable operations center in four main areas which are (1) trip-leasing, (2) buy-and-sell arrangements, (3) back-hauls of manufactured products and (4) safety violations.

8. Trip-leasing, if performed correctly, is legal; but most trip-leases by exempt truckers are illegal. Illegal trip-leasing is the most common violation of the exempt carrier.

9. Both buy-and-sell agreements and the back-haul of manufactured products are illegal operations performed by exempt carriers. There can be little question as to the legality of these operations.

10. The exempt carrier violates most of the Interstate Commerce Commission's safety regulations which govern all carriers that operate in interstate commerce. The most common safety violations are those dealing with the length of service of a driver and defective equipment. Because

exempt carriers are such flagrant violators of ICC safety regulations, they represent the greatest safety hazard on the American highway today.

11. The term "gray area" implies any form of illegal trucking and has overtones of illegal private carriage. The questionable operations performed by the "gray area" truckers consist of trip-leasing, buy-and-sell agreements, illegal trucking by exempt haulers, unlawful hauls by regulated carriers, phony shipper associations, pseudo farm cooperatives, and shady brokers. Trip-leasing of "gray area" operators is somewhat different than the trip-leasing of exempt carriers. The "gray area" operators lease their vehicles more to shippers than to regulated carriers as do exempt truckers. Buy-and-sell agreements by a private carrier are more difficult to disguise than those of the exempt carrier because the private carrier must prove that the goods carried are in his ordinary line of business. This has become known as the "primary business" test.

12. Estimates of the losses by regulated motor carriers in traffic and revenue resulting from the agricultural exemption are not available, but most experts believe these losses to be billions of dollars annually. The exemption has had both a direct and an indirect effect on the losses sustained by regulated motor carriers. The direct effect is the loss of traffic due to the inclusion

of more commodities into the agricultural exemption through legislative changes in the exemption and liberal court interpretations thereof. The indirect effect has resulted in the loss of traffic due to the growth in private carriage stimulated by the exemption. As private carriage increases, back-haul traffic becomes more competitive, and efforts to obtain return hauls lead to many of the illegal operations previously mentioned.

13. Illegal operations alone result in a loss to regulated motor carriers of approximately 11.2 billion ton-miles of traffic annually. This amounts to a financial loss of over \$800 million annually.

14. Outside of financial loss to our regulated motor carrier industry, the agricultural exemption has tended to weaken our national transportation system. The Interstate Commerce Commission has not been effective in limiting the growth of private carriage and illegal trucking operations due to its lack of manpower. Programs are now underway by organizations such as the Committee on Transportation Practices (COTP) and the Committee Against Unlawful Trucking (CAUT) to prevent the growth of illegal trucking.

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APPENDIX A

Buttermilk - Exempt

Corn fodder - Exempt

Cottage Cheese, see Cheese
 Cotton, carded but not spun, woven, or knitted - Exempt
 Cotton, ginned or unginned - Exempt
 Cotton linters - Exempt
 Cotton waste, consisting of scraps of cotton fibre not
 spun, woven or knitted - Exempt
 Cotton yarn - Not Exempt
 Cottonseed, whole - Exempt
 Cottonseed cake - Not Exempt
 Cottonseed, dehulled - Exempt
 Cottonseed hulls - Exempt
 Cottonseed meal - Not Exempt
 Crates, see Containers
 Cream, see Milk
 Cream cheese, see Cheese

Dehydrated, see commodity name: Fruits, Vegetables, Eggs, etc.
 Diatomaceous earth - Not Exempt
 Dinners, frozen - Not Exempt
 Dinners, seafood, Frozen - Exempt
 Dried, see commodity name: Fruits, Vegetables, Eggs, etc.

Eggs

Albumen, fresh, liquid - Exempt
 Dried - Exempt
 Frozen - Exempt
 In shell - Exempt
 Liquid, whole or separated - Exempt
 Oiled - Exempt
 Powdered, dried - Exempt
 Shelled - Exempt
 Yolks, dried - Exempt
 Yolks, fresh, liquid - Exempt

Fats, animal - Not Exempt

Feathers - Exempt

Feeds

Alfalfa meal - Not Exempt
 Alfalfa pellets - Not Exempt
 Beet pulp - Not Exempt
 Bran shorts - Not Exempt
 Copra meal - Not Exempt
 Corn gluten - Not Exempt
 Cottonseed products, see Cottonseed
 Distilled corn grain, residues, with or without
 solubles added - Not Exempt
 Fish meal - Not Exempt
 Hominy Feed - Not Exempt

Middlings - Not Exempt
 Oat Hulls, ground - Exempt
 Pelletized ground refuse screenings - Not Exempt
 Rice bran - Exempt
 Screenings, feed - Exempt
 Wheat bran - Not Exempt
 Wheat shorts - Not Exempt
 Fertilizer, commercial - Not Exempt
 Fish (including shell fish)
 General. Frozen, quick frozen, and unfrozen fish and shell fish in the various forms in which it is shipped, such as live fish, fish in the round, beheaded, and gutted fish, filleted fish, beheaded shrimp, and oysters, clams, crabs, and lobsters, with or without shells, including crab meat and lobster meat - Exempt
 Breaded, cooked or uncooked, fresh or frozen - Exempt
 Cakes, codfish, cooked or uncooked, frozen or fresh - Exempt
 Canned, as a treatment for preserving - Not Exempt
 Clam juice or broth, cooked or uncooked, frozen or fresh - Exempt
 Cooked or partially cooked fish or shell fish, frozen or fresh - Exempt
 Croquettes, salmon, cooked or uncooked, fresh or frozen - Exempt
 Deviled crabs, clams, or lobsters, cooked or uncooked, fresh or frozen - Exempt
 Dinners, cooked or uncooked, fresh or frozen - Exempt
 Fried fish fillets, oysters, or scallops, frozen or fresh - Exempt
 Frogs, live or dressed - Exempt
 Frozen, see General above and individual listings
 Hermetically sealed in containers as a treatment for preserving - Not Exempt
 Hermetically sealed in containers for cleanliness only, preservation attained by refrigeration - Exempt
 Meal - Not Exempt
 Offal (inedible portions of fish not further processed) - Exempt
 Oil from fishes - Not Exempt
 Preserved, or treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered - Not Exempt
 Salted, as a treatment for preserving - Not Exempt
 Shells, oyster, moving to market for use in button making - Not Exempt

Stew, consisting of raw oysters or clams, milk, and seasoning frozen but uncooked - Exempt
 Sticks, cooked or uncooked, fresh or frozen - Exempt
 Turtles, sea or fresh water - Exempt
 Whale meat, fresh - Exempt

Flagstone - Not Exempt

Flax fiber - Exempt

Flaxseed, whole - Exempt

Flaxseed meal - Not Exempt

Flour - Not Exempt

Flowers and flower plants, see Horticultural commodities

Fodder, corn and sorghum - Exempt

Forage, see Hay

Forest products

Bark - Exempt

Bark, boiled to clean and soften - Exempt

Blankets of pine and spruce boughs - Exempt

Greenery - Exempt

Holly sprigs and cuttings - Exempt

Leaves - Exempt

Leaves, sisal, husks and moisture removed - Exempt

Mistletoe - Exempt

Myrobalans, as imported in natural state - Exempt

Palmyra stalk fibers (fronds from palm leaves) - Exempt

Peat moss, dried, shredded, baled - Exempt

Resin, crude - Exempt

Resin products, such as turpentine - Not Exempt

Roots, natural or dried - Exempt

Sap, maple - Exempt

Spanish moss - Exempt

Sphagnum moss - Exempt

Spices, see separate listing: Spices

Trees, see separate listing: Trees

Valonia, as imported in natural state - Exempt

Wreaths of holly or other natural material with small amount of foundation or decorative material - Exempt

Frogs, see Fish

Frozen, see commodity name: Fruits, Vegetables, Fish, Poultry, etc.

Fruits and Berries

Bagged - Exempt

Bananas, fresh, dried, dehydrated or frozen - Not Exempt

Canned - Not Exempt

Citrus fruit sections, fresh, cold-packed, or semi-frozen - Exempt

Citrus fruit sections, frozen - Not Exempt

Color added - Exempt

Dates, pitted, dried - Exempt
 Dehydrated - Exempt
 Dried, naturally or artificially - Exempt
 Figs, dried, halved or quartered - Exempt
 Frozen - Not Exempt
 Fumigated - Exempt
 Graded - Exempt
 Hulls of oranges after juice extractions - Not Exempt
 In brine, to retain freshness - Exempt
 Juice, orange or other citrus - Not Exempt
 Juice, fruit, plain or concentrated - Not Exempt
 Kernels - Exempt
 Oiled apples - Exempt
 Peaches, peeled, pitted, and put in cold storage in
 unsealed containers - Exempt
 Quick frozen - Not Exempt
 Pies, frozen - Not Exempt
 Preserved, such as jam - Not Exempt
 Purees, strawberry and other, frozen - Not Exempt
 Raisins, seeded or unseeded - Exempt
 Sliced, fresh - Exempt
 Sliced, frozen - Not Exempt
 Strawberries, in syrup and unsealed containers in cold
 storage - Exempt

Grains

Artificially dried - Exempt
 Barley, rolled - Exempt
 Barley, whole - Exempt
 Corn, cracked - Exempt
 Corn, shelled - Exempt
 Corn, whole - Exempt
 Feeds, see separate heading: Feeds
 Hulls, see Feeds
 Milo maize - Exempt
 Oats, whole - Exempt
 Oil extracted from grain - Not Exempt
 Popcorn, popped - Not Exempt
 Popcorn, unpopped, shelled, in sealed or unsealed
 containers - Exempt
 Rice bran - Exempt
 Rice, brewers - Exempt
 Rice, clean - Exempt
 Rice, polish - Exempt
 Rice, precooked - Not Exempt
 Rice, whole - Exempt
 Rye, whole - Exempt

Sorghum grains, whole - Exempt
 Wheat germ - Not Exempt
 Wheat, whole - Exempt
 Grass sod - Exempt
 Gravel - Not Exempt
 Greenery, see Forest products

Hair, alpaca, camel, or goat, clipped from animal - Exempt
 Hair, hog or other animal, product of slaughter of animal -
 Not Exempt

Hay and forage, dried naturally or artificially - Exempt
 Hay, chopped - Exempt
 Hay, dehydrated - Exempt
 Hay, salt (from salt marshes) - Exempt
 Hay, sweetened with 3% molasses by weight - Not Exempt
 Hemp fiber - Not Exempt

Herbs, see Spices

Hides, green and salted - Not Exempt

Honey, in the comb or strained - Exempt

Honey, heat treated to retard granulation - Exempt

Hops - Exempt

Horticultural commodities

Bulbs - Exempt

Flowers, growing or cut - Exempt

Leaves, natural or dried - Exempt

Nursery stock - Exempt

Plants, vegetables and flower - Exempt

Roots, rhubarb, asparagus, mint, etc. - Exempt

Trees, growing, balled in earth - Exempt

Wreaths, holly or other natural material, with small
 amount of foundation or decorative material -
 Exempt

Humus, of a nature similar to peatmoss - Exempt

Ice for cooling subsequent shipments of exempt commodities -
 Exempt

Imported commodities - Have same status as domestic except
 that wool imported from any foreign
 country is not exempt.

Insecticides - Not Exempt

Juices, see Fruits

Jute fiber, in bales - Exempt

Kelp, dried, ground - Exempt

Latex, see Rubber

Leaves, see Forest products, Horticultural commodities and
 Spices

Livestock

Exhibit animals, such as those of 4-H club members which though showed for a few days are chiefly valuable for slaughter - Exempt

Medical use animals, such as ordinary healthy swine for serum manufacture - Exempt

Monkeys - Not Exempt

Ordinary, i.e., all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, and other special uses - Exempt

Race horses - Not Exempt

Registered or purebred cattle for ordinary farm or ranch uses, not chiefly valuable for breeding, race, show, or other special purposes - Exempt

Show horses - Not Exempt

Zoo animals - Not Exempt

Limestone, agricultural - Not Exempt

Linseed meal, see Meal

Lumber, rough sawed or planed - Not Exempt

Manure, in natural state - Exempt

Manure, dried or dehydrated, bagged - Exempt

Maple sap - Exempt

Maple syrup - Not Exempt

Meal, alfalfa - Not Exempt

Meal, copra - Not Exempt

Meal, cottonseed - Not Exempt

Meal, fish - Not Exempt

Meal, flaxseed - Not Exempt

Meal, linseed - Not Exempt

Meal, peanut - Not Exempt

Meal, soybean - Not Exempt

Meat and meat products, fresh, frozen or canned - Not Exempt

Milk and Cream

Buttermilk - Exempt

Chocolate - Not Exempt

Condensed - Not Exempt

Frozen - Exempt

Homogenized - Exempt

Pasteurized - Exempt

Powdered - Exempt

Raw - Exempt

Skim - Exempt

Skim, with two-thirds of water removed, in bulk or
unsealed containers - Exempt

Standardized - Exempt

Sterilized in hermetically sealed cans - Not Exempt

Vitamin "A" - Exempt

Milo, see Grains

Mohair, raw cleaned, or scoured - Exempt

Molasses - Not Exempt

Moss, see Forest Products

Mushrooms, fresh - Exempt

Nursery stock, see Horticultural commodities

Nuts, (including peanuts)

Peanut meal - Not Exempt

Peanut shells, ground - Exempt

Polished - Exempt

Raw, shelled or unshelled - Exempt

Roasted or boiled - Not Exempt

Shelled, raw - Exempt

Shells - Exempt

Shells, ground peanut - Exempt

Unshelled, raw - Exempt

Oats, see Grains

Oil, mint - Not Exempt

Oil, extracted from vegetables, grain, seed, fish or other
commodity - Not Exempt

Packaged commodities - Packaging exempt commodities does not
affect their exempt status

Peanuts, see Nuts

Peat Moss, see Forest products

Pelletized feeds, see Feeds

Pelts - Not Exempt

Pies, frozen - Not Exempt

Pigeons, racing - Not Exempt

Plants, vegetable or flower, see Horticultural commodities

Poles, see Trees

Popcorn, see Grains

Poultry, dressed, fresh or frozen - Exempt

Poultry feathers - Exempt

Poultry, frozen - Exempt

Poultry, live - Exempt

Poultry, picked - Exempt

Poultry, stuffed and frozen - Exempt

Pulp, beet - Not Exempt

Pulp, sugarcane - Not Exempt

Purees, see Fruits

Rabbits, dressed - Exempt
 Raisins, see Fruits
 Ramie fiber - Exempt
 Resin, see Forest products
 Rice, see Grains
 Rock, Not Exempt
 Roots, see Forest products, Horticultural commodities
 Rubber, crude, in bales - Not Exempt
 Rubber, latex, natural, liquid, from which water has been
 extracted and to which ammonia has been added -
 Not Exempt
 Rye, see Grains

 Sand - Not Exempt
 Sap, see Forest products
 Sawdust, from lumber mills - Not Exempt
 Seeds
 Cotton, see Cottonseed
 Deawned - Exempt
 Flax, see Flaxseed
 Inoculated - Exempt
 Meal made from seeds, see Meal
 Natural - Exempt
 Oil extracted from seeds - Not Exempt
 Packets or boxes of seeds in display racks - Exempt
 Scarified - Exempt
 Screened or sized - Exempt
 Spice, see Spices
 Sprayed for disease control - Exempt
 Seaweed, dried, ground - Exempt
 Shells, nut, see Nuts
 Shells, oyster, see Fish
 Shingle bolts, see Trees
 Skins, animal - Not Exempt
 Sliced, see commodity name: Fruits, Vegetables, etc.
 Soil, potting - Not Exempt
 Soil, top - Not Exempt
 Sorghum fodder - Exempt
 Sorghum grains - Exempt
 Soup, frozen - Not Exempt
 Spices and herbs, unground, whether seeds, berries, leaves,
 bark or roots - Exempt
 Spices and herbs, ground but not further processed - Exempt
 Stover - Exempt
 Straw - Exempt
 Sugar - Not Exempt
 Sugar beets - Exempt

Sugar cane - Exempt
 Sugar cane pulp - Not Exempt
 Sugar, raw - Not Exempt
 Syrup, cane - Not Exempt
 Syrup, maple - Not Exempt

Tea - Not Exempt
 Telephone poles, see Trees
 Textile waste - see Cotton waste
 Tobacco

Chopped leaf - Exempt
 Cigars and cigarette - Not Exempt
 Homogenized - Not Exempt
 Leaf - Exempt
 Redried leaf - Exempt
 Smoking - Not Exempt
 Stemmed leaf - Exempt
 Stems - Exempt

Top soil - Not Exempt

Trees

Bolts for making shingles - Exempt
 Brush, mesquite, twigs and debris burned off - Exempt
 Christmas, plain, sprayed, or coated - Exempt
 Cut to length, peeled, or split - Exempt
 Growing, see Horticultural commodities
 Sawed into lumber - Not Exempt
 Shingle bolts - Exempt
 Telephone poles, not creosoted - Exempt

Turtles, see Fish

Vegetables

Bagged - Exempt
 Beans, dried artificially and packed in small container - Exempt
 Candied sweet potatoes, frozen - Not Exempt
 Canned - Not Exempt
 Cooked - Not Exempt
 Cucumbers, salt cured - Exempt
 Cured - Exempt
 Cut up, fresh, in cellophane bags - Exempt
 Dried, naturally or artificially - Exempt
 Dehydrated - Exempt
 French fried potatoes - Not Exempt
 Frozen - Not Exempt
 Garlic powder - Exempt
 Graded - Exempt

Oil extracted from vegetables - Not Exempt
Onion powder - Exempt
Onion chips and flakes, dried - Exempt
Peas, split - Exempt
Peeled, uncooked - Exempt
Powder, onion and garlic - Exempt
Quick frozen - Not Exempt
Shelled - Exempt
Soup, frozen - Not Exempt
Soybean meal - Not Exempt
Washed, fresh, in cellophane bags - Exempt

Whale meat, see Fish
Wheat, see Grains
Wheat products, see Feeds, Flour
Wood chips for making woodpulp - Not Exempt
Wool, imported from any foreign country - Not Exempt
Wool, raw, cleaned, or scoured but not including wool
imported from any foreign country - Exempt
Wool grease, as obtained from cleaning or scouring process -
Exempt
Wool tops and noils - Not Exempt
Wool waste, carded, spun, woven or knitted - Not Exempt
Wool yarn - Not Exempt
Wreaths, see Forest products

Source: Interstate Commerce Commission Bureau of
Motor Carriers. Motor Carrier Information Bulletin 3,
Appendix, January 1962.

APPENDIX B

AGRICULTURAL EXEMPTION LAW

Sec. 7. (a) Clause (6) of subsection (b) of Section 203 of the Interstate Commerce Act, as amended, is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a colon and the following: . . . "Provided, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not Exempt': Provided further, however, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and

shellfish which have been treated for preserving such as canned, smoked, pickled, spiced, corned or kippered products);"

(b) Unless otherwise specifically indicated therein, the holder of any certificate or permit heretofore issued by the Interstate Commerce Commission, or hereafter so issued pursuant to an application filed on or before the date August 13, 1958 on which this section takes effect, authorizing the holder thereof to engage as a common or contract carrier by motor vehicle in the transportation in interstate or foreign commerce of property made subject to the provisions of part II of the Interstate Commerce Act by paragraph (a) of this section, over any route or routes or within any territory, may without making application under that Act engage, to the same extent and subject to the same terms, conditions and limitations, as a common or contract carrier by motor vehicle, as the case may be, in the transportation of such property, over such route or routes or within such territory, in interstate or foreign commerce.

(c) Subject to the provisions of section 210 of the Interstate Commerce Act, if any person (or its predecessor in interest) was in bona fide operation on May 1, 1958, over any route or routes or within any territory, in the transportation of property for compensation by motor vehicle made subject to the provisions of part II of that Act by paragraph (a) of this section, in interstate or foreign commerce,

and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on May 1, 1958, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Interstate Commerce Commission shall without further proceedings issue a certificate or permit, as the type of operation may warrant, authorizing such operations as a common or contract carrier by motor vehicle if application is made to the said Commission as provided in part II of the Interstate Commerce Act and within one hundred and twenty days after the date on which this section takes effect. Pending the determination of any such application, the continuance of such operation without a certificate or permit shall be lawful. Any carrier which on the date this section takes effect is engaged in an operation of the character specified in the foregoing provisions of this paragraph, but was not engaged in such operation on May 1, 1958, may under such regulations as the Interstate Commerce Commission shall prescribe, if application for a certificate or permit is made to the said Commission within one hundred and twenty days after the date on which this section takes effect, continue such operation without a certificate or permit pending the determination of such application in accordance with

the provisions of part II of the Interstate Commerce Act.

Source: Celia Sperling, The Agricultural Exemption in Interstate Trucking: Developments in 1957-1958, Marketing Research Division, United States Department of Agriculture, Marketing Research Report No. 352 (Washington: Government Printing Office, 1959), pp. 12-14.

APPENDIX C

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
TRANSPORTATION AND FACILITIES RESEARCH DIVISION
WASHINGTON 25, D. C.BUDGET BUREAU NO. 40-60181
APPROVAL EXPIRES 8-31-61

AGRICULTURAL EXEMPTION STUDY - MOTOR CARRIER MAIL QUESTIONNAIRE

NOTE: CORRECT NAME AND ADDRESS AS NECESSARY

COUNTY: _____

TELEPHONE: _____

(SIGNATURE OF PERSON COMPLETING REPORT) _____

1. Do you hold operating rights from the Interstate Commerce Commission to haul any commodity? ☐ YES ☐ NO
(If "No," complete questions 2 through 7; if "Yes," disregard remaining questions and return questionnaire in enclosed envelope.)

2. Which of the following would best describe your principal business activity: (Check one)

- a. ☐ Hauling agricultural commodities for hire
b. ☐ Hauling agricultural commodities to which you hold title
c. ☐ Other than the hauling of agricultural commodities

3. How long have you been in the trucking business? YEARS

4. What equipment did you own or have under lease on January 1, 1961:

	NUMBER		NUMBER	NUMBER REFRIGERATED
a. Straight trucks		c. Semitrailers		
b. Truck tractors		d. Full trailers		

5. Estimate your total truck mileage for 1960 About what percentage was empty mileage? %

6. About what quantity of each of the following commodity groups (exempt in interstate commerce) did you haul in 1960:

COMMODITY GROUP	OUTBOUND		HOMEBOUND	
	REPORT AS "TONS" OR "TRUCKLOADS," WHICHEVER DATA ARE MOST READILY AVAILABLE			
	TONS	TRUCKLOADS	TONS	TRUCKLOADS
a. Fresh fruits and berries				
b. Fresh vegetables and potatoes				
c. Poultry and eggs				
d. Grain				
e. Livestock				
f. Cotton and wool				
g. Hay and forage				
h. Milk and cream				
i. Other (Specify)				

7. Of the total outbound and homebound volume hauled in 1960:

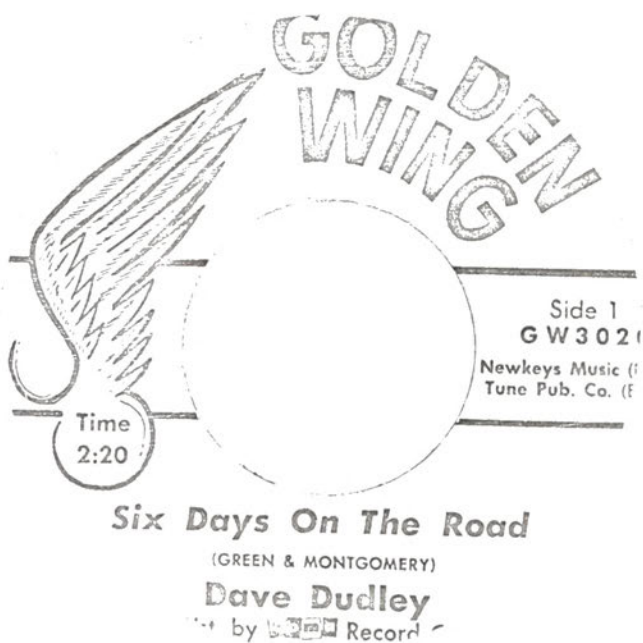
- a. About what percentage was picked up and delivered in the same States? %
b. What were the principal movements of the commodities that you hauled across State lines, and between which States did you haul them? (List the major movements for the commodities you hauled for the year 1960, not individual hauls.)

COMMODITY GROUP	STATES - WHERE PICKED UP	STATES - WHERE DELIVERED

(FOR ADDITIONAL SPACE USE REVERSE)

APPENDIX D

SIX DAYS ON THE ROAD



For Record see pocket at back of book.

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