

tion sufficiently to force an entirely new investigation and issuance of a cease and desist order.

The question can be raised whether passage of P.L. 89-170 has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of proving their ineligibility to use the co-op exemption still rests with the IOC or any plaintiff in a court suit. Since farmer cooperatives can now lawfully engage, within certain broad limits, in the for-hire transport of general commodities for nonmembers, the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of P.L. 89-170 in this area of enforcement is definitely restricted at this time.

#### EFFECT OF NORTHWEST CO-OP CASE

A much more serious complication has arisen as a result of the Supreme Court's action last year which, in effect, upheld an appellate court's ruling in the Northwest Agricultural Cooperative Association Case [350 F. 2d 252 (9th Circuit, 1965) certiorari denied (1966)] that the farmer cooperative exemption should be interpreted broadly to permit the backhaul of general commodities for nonmembers so long as revenues therefrom do not exceed its cooperative function revenues and are incidental and necessary to the cooperative's primary legal activity.

The effect of this court decision is to permit farmer cooperatives lawfully to engage in extensive for-hire transportation for nonmembers. Since there are approximately 8,600 farmer cooperatives in the United States, the potential competition to regulated carriers is sizeable. Furthermore, since many of these cooperatives are multi-million-dollar organizations, their potential for engaging in general for-hire transportation beyond IOC economic regulation is equivalent to the scope of operations of many of the larger regulated motor carriers.

The combined adverse effect of these two factors—the difficulty of determining a co-op's eligibility and the liberal interpretation of the exemption by the courts—clearly shows the need for remedial legislative action as soon as possible.

#### SPECIFIC EXAMPLES OF CO-OP TRAFFIC SOLICITATION

We believe immediate legislative action is needed to prevent a rapid rise in traffic solicitation activity on the part of farmer cooperatives, or organizations posing as such, in the general freight field. As an illustration of this, we can cite a number of specific examples furnished us by various shipper members of TAA. Excerpts from letters sent to us by traffic executives of some of the nation's leading corporations include the following:

1—"A few months ago, a representative of an Illinois farm co-op phoned me. The purpose of the telephone call was to offer the transportation of his co-op in hauling our shipments (*hardware manufacturer*) from Louisville to any point in the state of Illinois. He indicated that the rates could be negotiated." (Underline words added.)

2—"There is enclosed a copy of letter received from one of the farmer cooperatives." (Copied in part from letter from the Milk Producers Marketing Co., Kansas City, Kansas, to a major *glass manufacturer*.)

"I want to thank you for the time you gave me during our phone conversation of two weeks ago, regarding transportation. This is a confirmation of the following rates I quoted you, based on a 40,000 minimum, to California points. Pittsburgh Area, 3.50 cwt.; Akron, Ohio, 3.00 cwt.; St. Louis, 2.50 cwt.; and Chicago, 2.75 cwt. It is our sincere desire to further acquaint you with our ability to be of service to you, and if given the chance I am sure we can cement a very pleasant relationship. Won't you at your earliest convenience let us hear from you?"

3—"Recently, we received an order which called for the material to be shipped via the XYZ Dairy Co., which included notation 'Customer Pickup.' The order indicated that the material was sold to one of our major customers in XYZ. In checking into this transaction, it developed that XYZ Dairy was to pick up the shipment in their truck and make delivery to two customers in XYZ. Once we developed this fact, we immediately ran a check on the XYZ Dairy Co. to determine if it was a bona fide co-op. We found that this company was not a farmer co-op and, therefore, we made other arrangements to make shipment." (Names indicated by XYZ at request of shipper, whose company is in the *chemical business*.)