tion for nonmembers, of non-farm related traffic is not exempt from regulation pursuant to the provisions of section 203(b)(5) of the Interstate Commerce Act.[90]

CONCLUSION

Cooperative associations, the Interstate Commerce Commission, and the courts have been obligated to interpret the agricultural cooperative exemption by attempting to ascertain Congressional intent with respect to the adaptation of an inherently ambiguous statute. The Commission has urged that the exemption be construed strictly in order to effectuate regulation of all but those cooperatives clearly falling within the terms of the statutory definition of a cooperative. It has seen nonmember backhauls as permissible only if "functionally related" to the main purpose of service to member farmers.

The courts infer from its conduct that Congress has tended to give cooperative associations a favored status. Courts consistently have endeavored to keep the operational impediments of cooperatives to the minimum allowable by a fair interpretation of the statutory purpose. They have held that nonmember backhauling of nonagricultural products and supplies is acceptable if such an activity is "necessary and incidental" to the main purpose of the association.

When a statute is ambiguous, it is the job of the court to interpret the statute in a manner consistent with its determination of the legislative purpose for enactment.[91] A literal interpretation should not be effectuated if legislative purpose is at variance with such a construction.[92] If the words appear unduly narrow to give the statute a realistic and intended meaning, it is the function of the courts to extend its application to broader limits than the words might literally permit.[93]

At the time the Motor Carrier Act and the Agricultural Marketing Act were enacted,[94] the present extent of transportation operations by cooperatives, and the necessity, in many instances, for them to backhaul nonagricultural products for nonmembers as a prerequisite to economical operations, was undoubtedly not anticipated. But the stipulated policy and the contemporary dialogue indicate that Congress intended to allow cooperatives a measure of latitude in conducting their affairs, all of which should ultimately benefit the public as agricultural consumers. The "necessary and incidental" test allows cooperatives to retain this favored position while remaining within the bounds of the exemption. And while these statutes could be modified to provide more exact exemption criteria, legislative unwillingness to change the provisions has made such discussion moot.

Recently decided investigations by the Interstate Commerce Commission indicate that the "necessary and incidental" test can be successfully implemented, despite the fears of that agency to the contrary. In August 1966, the Commission held that, when its exemption is challenged, an association must first bring itself within the statutory definition of a "cooperative association" and then must prove to the Commission that, as a matter of fact its nonagricultural activities are actually incidental, and actually necessary.[95] In May 1967, the Commission further narrowed the test to require that, to be "necessary and incidental," nonfarm activities could not be "a separate direct movement;" they must be conducted as a related backhaul movement resulting from the delivery of member products to market.[96] Thus, even though more liberal than the Commission

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[90] *Id.*

[91] Day v. North Am. Rayon Corp., 140 F. Supp. 490, 493–94 (E.D. Tenn. 1956); United States v. American Trucking Ass'ns, 310 U.S. 534, 542–44 (1940); SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344, 350–51 (1943); Cawley v. United States, 272 F.2d 443, 445 (2d Cir. 1959); Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945); Brodie v. Gardner, 258 F. Supp. 753, 758 (N.D. Ind. 1966).

[92] Ozawa v. United States, 260 178, 194 (1922), *cited in* United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940) *and* Crosse & Blackwell Co. v. FTC, 262 F.2d 600, 606 (4th Cir. 1959). *Accord,* Wirtz v. Allen Green & Associates, 379 F.2d 198, 200 (6th Cir. 1967); United States v. Maryland *ex rel.* Meyer, 349 F.2d 693, 695 (D.C. Cir. 1965); Richmond F. & P.R.R. v. Brooks, 197 F.2d 404, 407 (D.C. Cir. 1952); Arkansas Oak Flooring Co. v. Louisiana & A. Ry., 166 F.2d 98, 101 (5th Cir. 1948).

[93] Juneau Spruce Corp. v. ILWU, 83 F. Supp. 224, 227 (D. Alas. 1949); Elizabeth Arden, Inc. v. FTC, 156 F.2d 132, 134 (2d Cir. 1946); Delany v. Moraitis, 136 F.2d 129, 131–32 (4th Cir. 1943); Day v. North Am. Rayon Corp., 140 F. Supp. 490, 494 (E.D. Tenn. 1956); Bloch v. Ewing, 105 F. Supp. 25, 28 (S.D. Cal. 1952).

[94] The Motor Carrier Act was enacted in 1935, and the Agricultural Marketing Act in 1929.

[95] Agricultural Transp. Ass'n of Tex. Investigation of Operations, No. MC C–4028, 1966 FED. CARR. REP. ¶ 36,034.

[96] Edgerton Cooperative Oil Ass'n Investigation of Operations, No. MC C–4570, 1967 FED. CARR. REP. ¶ 36,100.