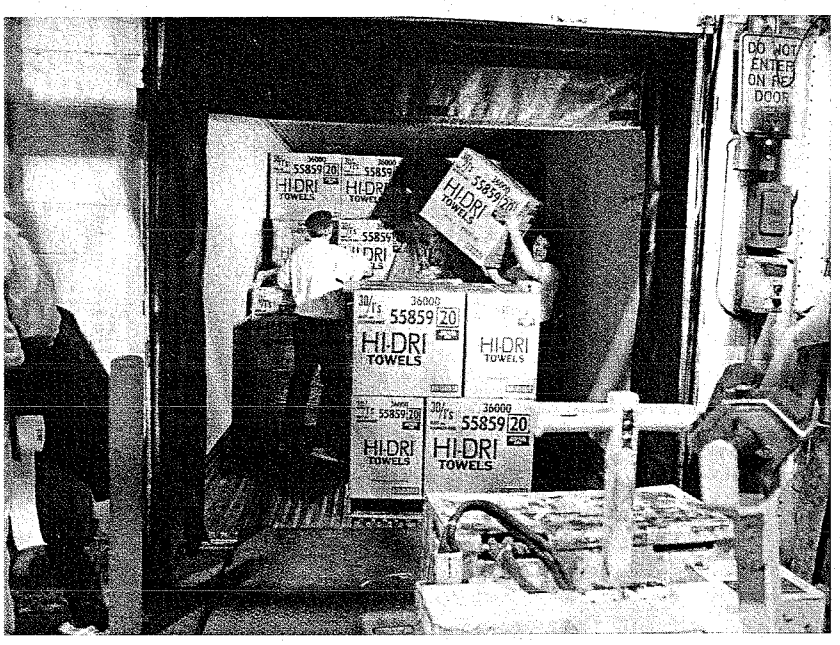
Loading and Unloading Practices Related to Lumping: Status and Implications for Motor Carriers, Shippers, and Other Parties



Executive Summary

Prepared by:
Iowa State University

Funded by:
American Trucking Associations Foundation, Inc.
Midwest Transportation Center

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Prepared by:

Benjamin J. Allen, Ph.D.
Richard F. Poist, Ph.D.
Jack H. Blanshan, J.D.
Carol J. Thompson, M.S.

IOWA STATE UNIVERSITY

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For more information contact the Midwest Transportation Center at 515/294-8103 or fax requests for information to 515/294-0467. The mailing address is:

Midwest Transportation Center
2521 Elwood Dr. Suite 125
Ames, IA 50010-8263

IOWA STATE UNIVERSITY

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Introduction

As the United States faces increased competition in the world market, we must continue to improve those infrastructure industries, such as freight transportation, on which national and international economies depend. Any improvements in efficiency in freight transportation are multiplied many times over in the logistics supply chain, thus creating a competitive advantage for those countries or economies that enjoy highly-efficient, low-cost transportation. To achieve any possible increases in efficiency, we must examine the business practices of our freight transportation industries, identify opportunities to increase efficiency, and modify business practices to take full advantage of these opportunities. Toward that end, this research examined one practice associated with the trucking industry – lumping, or the loading and unloading of motor carrier freight by individuals other than the employees of motor carriers, shippers, or receivers.

The purpose of this research is to provide a contemporary view of lumping and lumping practices. Lumping has long been recognized as a fact of life in the motor carrier industry. However, since deregulation the economic factors associated with lumping have become more important to motor carriers which are forced by increasingly competitive conditions to provide more services to customers, including loading and unloading, without increased rates to cover their costs. Lumping issues and problems can confront not only motor carriers but shippers and receivers as well and have the potential to adversely affect shipper-carrier relationships. Relatively little research on general lumping practices has been conducted, particularly on the impact of lumping on the total supply chain environment in which carriers, shippers, receivers, and other parties operate. This exploratory research attempts, at least in part, to fill this void by moving from anecdotal evidence to a more comprehensive and systematic examination of this important topic.

Research Questions and Methodology

The research efforts were directed toward investigation of three major questions:

- What is the nature and extent of lumping as currently practiced in the United States?
- What are the benefits and problems associated with lumping for motor carriers, shippers, receivers, and drivers?
- What are the most important managerial and public policy implications of current lumping practices?

Because little information has been systematically collected on lumping practices, a substantial amount of survey work was required to determine not only the nature and extent of lumping practices, but also the importance placed on the major lumping problems and benefits by each of the parties involved in the lumping issue. Thus, this project breaks new ground in systematically collecting information from motor carriers, shippers, receivers, and drivers about their use and perception of lumpers. To this extent, the research is exploratory in nature.

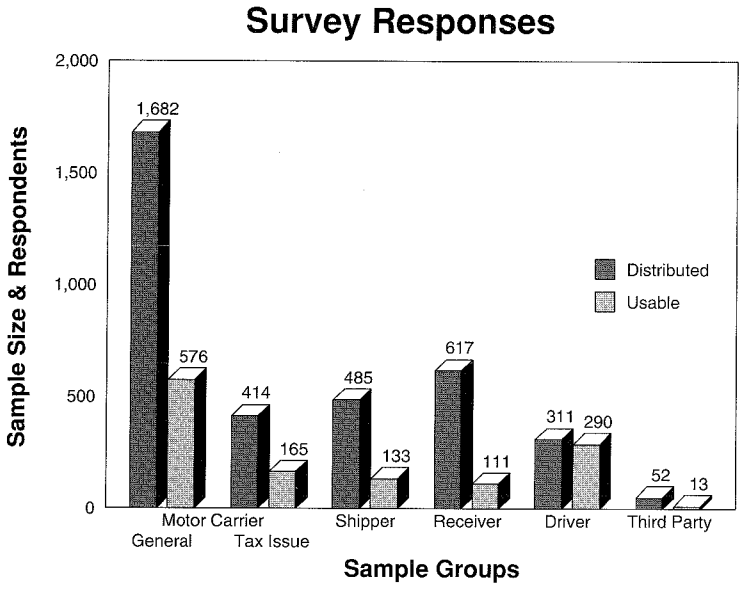


Figure I

A total of six survey instruments were developed and disseminated in an effort to generate a data base which would provide more accurate and meaningful information on the current nature and extent of lumping and its associated problems and benefits. This results in a much stronger foundation on which policy options addressing the significant managerial and public policy issues may be based. Descriptions of the six survey instruments are presented below, and response rates by sample group are depicted in Figure 1.

1) **MOTOR CARRIER—GENERAL SURVEY:** Sent to 1,682 Class I, Class II, and Class III truckload motor carriers of general freight, refrigerated products, and agricultural commodities. Number of usable responses: 576.

2) **MOTOR CARRIER—TAX-RELATED ISSUE SURVEY:** Sent to 414 Class I, Class II, and Class III motor carriers included in the larger sample of 1,682 listed above. Number of usable responses: 165.

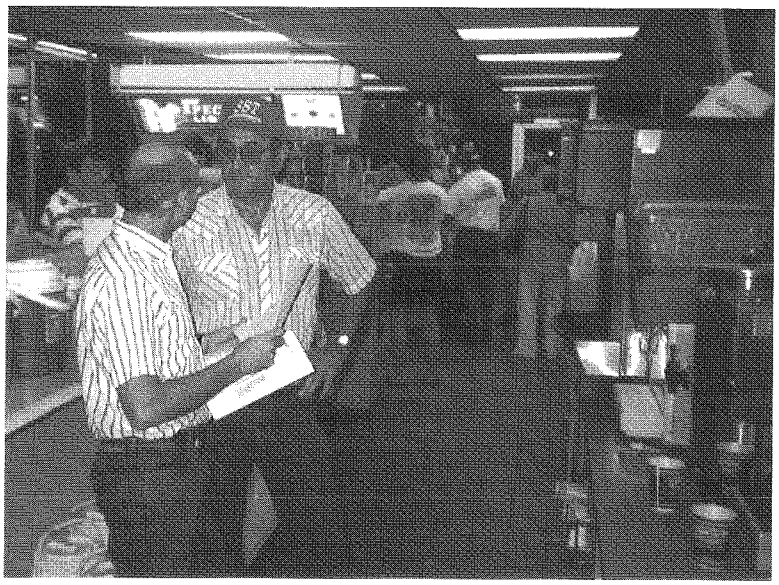
3) **SHIPPER SURVEY:** Sent to 485 shippers falling into three categories: general shippers, large food manufacturers, and produce growers. Number of usable responses: 133.

4) **RECEIVER SURVEY:** Sent to 617 firms including general and refrigerated warehouses, wholesale and retail grocery firms, and department/discount/wholesale/stores. Number of usable responses: 111.

5) **DRIVER SURVEY:** Distributed to 311 drivers at three truck stop locations along the Iowa portions of major regional and national trucking corridors. Surveys were distributed only to truckload drivers including both owner-operators and company employee drivers. Number of usable responses: 290.

6) **THIRD-PARTY LOADING/UNLOADING FIRM SURVEY:** Sent to the 52 third-party loading/unloading firms identified by motor carriers responding to the motor carrier general survey. Number of usable responses: 13.

While the nature and extent of current lumping practices were well-addressed by the survey instruments, identifying and evaluating the benefits and problems associated with lumping required collecting information from additional sources and utilizing other research methodologies. First, secondary sources, including earlier studies on lumping which were more narrow in scope as well as trade journal articles, provided information on the problems and benefits. Second, significant insights about the problems and benefits of lumping were obtained by interacting with motor carrier, shipper, and receiver professionals; over-the-road drivers, including both owner-operators and company employee drivers; and government experts involved with the lumping issue. This interaction was achieved through several means: formal and informal meetings and discussions involving members of the ATA Task Force on Lumping, conversations with numerous other practitioners and government officials, and a specially arranged Focus Group meeting that brought together representatives from motor carriers, shippers, receivers, and government, as well as professional drivers and lumpers. Third, legal issues associated with both using and providing lumping services were identified and evaluated by examining relevant case and statutory law.



An Iowa State University researcher gathers survey information from a driver employed in the truckload motor carrier industry.

Based upon the information, findings, and analyses that resulted from these investigations, the major public policy and managerial implications of lumping were identified. These and the research results are presented in the following sections.

Research Results

The research results presented in this section pertain to the extent and nature of lumping and its associated benefits and problems for motor carriers, shippers, receivers, and drivers. In addition, this section contains a discussion of the results of special studies of the third-party loading/unloading industry and the relevance and implications of Internal Revenue Service (IRS) and court rulings with respect to worker classification as related to lumping.

Extent and Nature of Lumping

To fully understand the scope of the lumping issue and how and why the parties involved are affected by lumping practices, it was imperative that a careful and substantive effort be made to collect data on the magnitude of the lumping issue in terms of the resources allocated to it, the number of carriers affected by it, and the extent to which the use of lumpers varies across carriers, shippers, and receivers. Similarly, to understand the operations and limitations of the markets in which lumpers are used, various characteristics of the nature of lumping practices and lumpers were determined. Fundamental to the understanding of lumping issues in general was knowledge of the loading and unloading practices in the trucking industry.

Key findings with respect to loading and unloading practices:

- **Unloading Responsibility Unclear for 675,000 Loads.** Carriers, shippers, and receivers generally agreed that for about seven percent of the loads the responsibility to unload is either undefined or unclear. For only the motor carrier respondents involved in this study, this translates into about 675,000 loads in 1992 for which the responsibility was unclear or undefined.

  Carriers of refrigerated products have a significantly higher percentage of their loads with undefined or unclear unloading responsibility than either general freight carriers or carriers of agricultural commodities.

  The receivers of goods from general shippers had a greater responsibility to unload than receivers of goods from produce shippers or large food manufacturers.

The increasing use of unitized shipments, however, has not eliminated hand loading or unloading of freight.

- **Two-thirds of Shipments Are Unitized.** Carriers, shippers, and receivers indicated that about two-thirds of their shipments were unitized. Nearly one-half of the carriers responding indicated that the use of unitized shipments had increased during the last five years. Increased use of unitized shipments, however, has not eliminated hand loading and unloading of freight, with receivers indicating that more than a one-third of their unitized shipments required breakdown or repalletization in 1992.

  Class III carriers indicated a significantly lower percentage of their loads were unitized than Class I and Class II carriers.

  Carriers of refrigerated products indicated a significantly higher percentage of their loads were unitized than general freight carriers and carriers of agricultural commodities.

Key findings with respect to the extent of lumping practices:

- **Three-fourths of Motor Carriers Use Lumpers.** A sizeable majority of responding motor carriers – 72% – used lumpers in 1992, and those carriers had lumpers involved in loading or unloading of about half of their loads. More than half of the responding carriers indicated that the percent of truckloads for which lumpers were used had increased over the past five years. Comparisons were made by carrier size, primary product hauled, and type of operation.

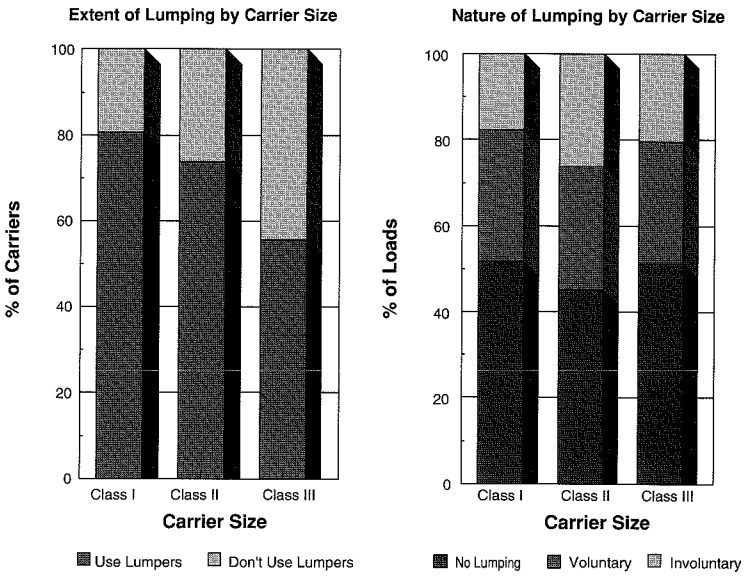


Figure 2

As compared to Class III carriers, a significantly higher percentage of Class I and Class II carriers used lumpers in 1992. Figure 2 illustrates the extent and nature of lumping by carrier class.

A significantly higher percentage of carriers of refrigerated products than either general freight carriers or carriers of agricultural commodities used lumpers. Furthermore, carriers of refrigerated products indicated a much higher percent of their loads involved the use of lumpers than was indicated by either general freight carriers or carriers of agricultural commodities. Figure 3 illustrates the extent and nature of lumping by primary product hauled.

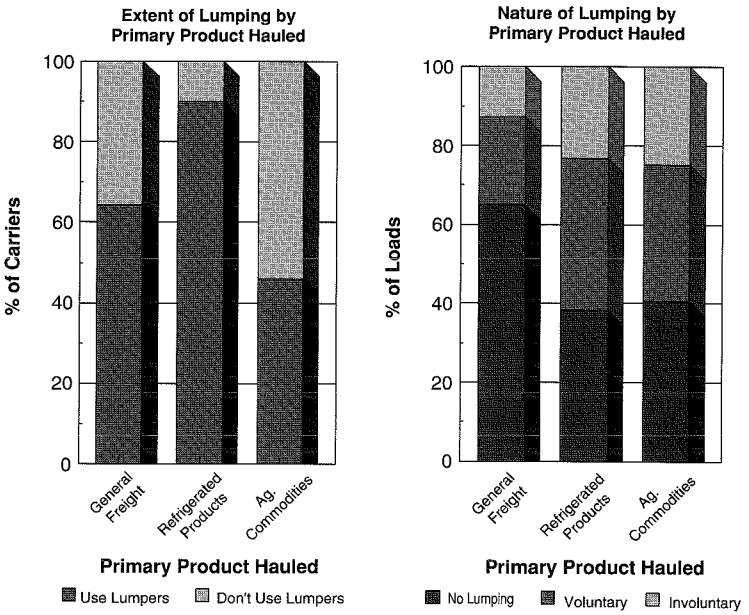


Figure 3

Lastly, more contract carriers used lumpers than either common carriers or exempt carriers.

When examining the extent of lumping, the following items were identified as major factors in increasing the frequency of lumping:

- Responsibility for loading or unloading is unclear or undefined.
- Loading or unloading facilities are large.
- Third-party loading/unloading firms are available.

- The driver's reimbursement for lumping fees exceeds loading/unloading allowances.
- A broker arranges the load.

- **Lumper Use at Shipper and Receiver Facilities.** Six out of ten receivers reported having lumpers involved in unloading at their facilities, while only one of ten shippers used lumpers at their facilities.

  In terms of percent of truckloads involving lumpers, non-warehouse receivers of food products were significantly more involved with lumpers than public warehouses.

Key findings with respect to the nature of lumping practices:

- **Two-fifths of Lumping Is Involuntary.** Two-fifths of all lumping in 1992 was reported as involuntary by responding motor carriers. While this does represent the loads for which motor carriers did not want to use lumpers, it does not, however, represent the amount of illegal lumping practices as defined by the Motor Carrier Act of 1980.

  In terms of their overall lumping exposure, general freight carriers experienced much less involuntary lumping than either carriers of refrigerated products or carriers of agricultural commodities. In addition, exempt carriers perceived a much higher percent of their lumping experiences to be involuntary then either common carriers or contract carriers. Furthermore, Class II carriers also categorized a higher percent of their lumping experiences into the involuntary group than either Class I or Class III carriers.

  As for drivers, company-employee drivers appear to be exposed to involuntary lumping less than owner-operators.

- **Widespread Use of Third-Party Loading/Unloading Firms.** Third-party loading/unloading firms have been used more than conventional wisdom would suggest. Half of the motor carriers surveyed have had some experience with third-party firms; nearly half of the receivers had third-party firms available at their facilities in 1992; and more than half of the drivers indicated they had used third-party firms in 1992.

  As might be expected, the larger the carrier the more likely it had used a third-party firm. Also, it was found that a higher percentage of carriers of refrigerated products used third-party firms than either general freight carriers or carriers of agricultural commodities.

A lumper unloads a truck after being hired by the driver.

- **Most Lumping Occurs at the Unloading Site.** Consistent with anecdotal evidence, survey results indicated nearly all lumping takes place at the unloading site. Of all unloading sites, receivers' private warehouses ranked highest in the prevalence of lumping, followed by public warehouses. As pictured on page 6, a lumper hired by a contract carrier is unloading a floorload of paper products at the warehouse of a major retail grocery chain.

- **Unitized Shipments Do Not Eliminate Lumping.** Data from the motor carrier, driver, and receiver surveys indicated that non-unitized shipments involve lumpers almost twice as much as unitized shipments. Therefore, the use of unitized shipments mitigates, but does not eliminate, the need or requirement to use lumpers.

  In fact, certain types of shipments involve greater use of lumpers on unitized loads than other types of shipments. For example, carriers of refrigerated products and carriers of agricultural commodities used lumpers on their unitized loads much more than general freight carriers.

  Similarly, drivers use lumpers extensively for floor loads and almost as much for unitized loads requiring breakdown or repalletization.

- **Lumping Practices Are Pervasive.** Lumping occurs throughout the United States, with two-thirds of motor carriers indicating that lumping occurs in most or virtually all of their markets.

  Even more significant, nine out of ten carriers of refrigerated products and nearly six out of ten carriers of agricultural commodities use lumpers in virtually all of their markets.

- **Average Cost of Lumpers**. The average cost for using lumpers was $65 for motor carriers, $92 for shippers, and $58 for receivers. Drivers indicated costs in the $61 to $70 range.

- **$250 Million Paid to Lumpers.** In 1992, approximately $250 million was paid to lumpers for loading or unloading the equipment of the motor carrier respondents involved in this study. On average, $600,000 was spent to load and unload equipment for each of the respondents.

- **Lumping Fee Reimbursements.** Receivers usually do not reimburse motor carriers that hire lumpers, yet receivers are usually reimbursed when they hire lumpers.

  Four out of five drivers received reimbursement from their employers or lessors when they hired a lumper. However,

while nine out of ten company drivers were reimbursed for lumping costs, less than seven out of ten owner-operators were reimbursed for these costs.

Third-Party Loading/Unloading Firms

A third-party loading/unloading firm is defined as an independent business firm that specializes in contracting to provide loading and/or unloading services. A special study was made of these third-party firms due to their potential for mitigating, if not eliminating, some of the problems commonly associated with the use of self-employed or independent lumpers. For example, potential carrier, shipper, receiver, or owner-operator liability under federal, state, and workers' compensation laws may be resolved when using lumping services provided by a third-party loading/unloading firm. If these firms can compete on the basis of price and service with self-employed lumpers, the use of third-party firms could become an attractive option for motor carriers, shippers, and receivers.

Figure 4

To gain a better understanding of how third-party firms are structured and operated and how their services are perceived by users, both third-party loading/unloading firms and users of their services were surveyed. In general, to determine the viability of third-party firms in solving some of the lumping problems, issues such as their ability to compete with self-employed lumpers on the basis of price and service, the problems that these third-party loading/unloading firms create for users, and the degree to which they actually insulate the user from tax and other types of liability exposure were examined.

Key findings with respect to the third-party lumping industry:

- **Third-Party Industry Larger Than Expected.** The number of third-party firms is larger than anecdotal evidence suggests, with at least 50 loading/unloading firms in operation, and conceivably many more given the receiver and driver responses. Interestingly, a number of third-party firms believe their services are unique and are unaware of other similar firms.

  Third-party firms are located throughout the United States, with responding firms operating in 18 states and serving at

least 140 facilities. The areas served by third-party respondents are shown in Figure 4.

- **Third-Party Loading and Unloading Industry is Composed of Small Firms.** The third-party loading/unloading industry is comprised of many small firms, with the average third-party firm having revenues of about $700,000 from loading/unloading operations and employing 40 loading/unloading laborers. The number of laborers employed ranged from 11 to more than 800.

- **Third-Party Firms Are Not A New Idea.** The concept of a third-party loading/unloading firm is older than suggested by anecdotal evidence. Based upon a court case involving a third party firm, the concept appears to be more than 35 years old.

- **Other Services Offered.** Most third-party loading/unloading firms offer services in addition to loading/unloading. Approximately half of the firms provided warehousing, half provided temporary employees, one-third provided consulting, and one-fifth provided brokerage services. However, providing loading/unloading services was the primary business for all but one of the respondents.

Key findings with respect to operational characteristics:

- **Legal Form of Business Structure.** Most third-party firms operate as corporations, while a small minority of firms operate as single proprietorships. Those operating as corporations may do so in order to insulate the owners from potential legal liability.

- **Worker Classification and Issues.** Some third-party firms use 100% employees, others use 100% independent contractors, and still others use a mix of both. There appears to be a move toward using company employees instead of independent contractors because of legal concerns.

  Among the most common third-party firms' laborers are former dock/warehouse employees, former independent lumpers, college students, and temporary employees.

  The average pay received by laborers of third-party loading/unloading firms ranged from $30 to $90 per truckload, with the overall average amounting to less than $50 per truckload.

  Annual turnover of third-party loading/unloading personnel is high, with one firm reporting a turnover rate of 700%. The median turnover rate was 50%.

- **Commodities Handled.** The commodity group most likely to be loaded/unloaded by a third-party firm is refrigerated or frozen foodstuffs. This is similar to the general findings presented in Figure 3. However, two of the third-party respondents handle tires 100% of the time.

- **Location of Service.** Almost all third-party firms provide loading/unloading services at receivers' facilities, about half serve shippers' facilities, and a third provide loading/unloading services at their own facilities.

- **Nature of Contracts.** Many of the third-party firms have prearranged contracts with companies, with the number of companies contracted ranging from 2 to 96 companies (the median is 7 companies). This reinforces the previous finding that the third-party loading and unloading industry is comprised mainly of small firms. Nearly two-thirds of these prearranged contracts are with motor carriers, while the remaining contracts are split nearly evenly between shippers and receivers.

- **Charge for Services.** The overall average charged by third-party loading/unloading firms is $71 with a range between $40 and $121.

- **Difficulties Exist.** Potential difficulties exist when third-party firms enter into exclusive contractual arrangements with receivers, shippers and motor carriers. For example, a conflict may arise when Carrier X, with an exclusive contractual arrangement with Third-Party Firm A, arrives at a receiver's facility where the receiver has an exclusive contractual arrangement with Third-Party Firm B.

Key findings with respect to benefits offered by third-party firms:

- **Major Benefits.** Among the major benefits reported were the payment of worker taxes, workers' compensation insurance, and liability insurance by the third-party firm. In addition, consistent loading/unloading fees, account billing, and elimination of driver supervision also were indicated as benefits.

Key findings with respect to problems experienced by third-party firms:

- **Unfair Competition.** Competition from self-employed lumpers who do not pay taxes, workers' compensation insurance, or liability insurance reduces the viability of third-party firms and makes it difficult for these firms to earn a profit.

- **Lack of Acceptance.** Lack of acceptance of third-party loading/unloading firms by motor carriers, shippers, and receivers is due in large part to their refusal to distinguish the services provided by third-party firms from services provided by self-employed individual lumpers which reduces the market potential for third-party firms.

Key findings with respect to user perspectives:

- **Cost.** Motor carriers and shippers tend to believe that the cost per load of using a third-party loading/unloading firm is higher than when using a self-employed lumper. In contrast, receivers believe the cost of using third-party firms is lower.

- **Reasons for Use.** Reasons for using third-party loading/unloading firms rather than self-employed lumpers vary among carriers, shippers and receivers. Motor carriers ranked the reduction in loading/unloading time and reduction of driver harassment as the two most important reasons. Both shippers and receivers included standardization of loading/unloading fees among the two most important reasons, with shippers adding the reduction in loss and damage and receivers including the reduction of personal injury liability.

Benefits and Problems Associated with Lumping

To fully and fairly evaluate the services provided by lumpers, perspectives of all of the different groups using or allowing the use of lumpers were systematically sought in a series of survey instruments. These groups were asked to identify and rate the importance of benefits and problems associated with lumpers and lumping practices. In addition, views were sought on the problem of involuntary lumping.

Key findings with respect to perceived benefits:

- **Carrier Benefits.** Of the benefits from lumping identified by carriers, two were named most often:
  - reduced driver fatigue and
  - reduced risk of driver injury from loading and unloading.

  These benefits were rated as being "important" or "very important" by 77% and 70% of the respondents respectively. No other benefit received higher than a 60% rating.

- **Shipper Benefits.** As might be expected, shippers identified benefits from lumping that differed greatly from motor

carriers. The two benefits rated as most important by shippers were:

- improved relations with receivers/customers and
- reduced loading time during periods of normal demand.

These benefits were rated as being "important" or "very important" by 44% and 35% of the respondents respectively. No other benefit received as high as a 30% rating.

- **Receiver Benefits.** Similar to shipper benefits yet including some lumping benefits unique to unloading, receivers perceived the most important benefits of lumping to be:
  - increased ability to meet peak-period unloading demands (75% of the respondents rated the benefit as either "important" or "very important"),
  - reduced unloading times during periods of normal demand (67%),
  - facilitating floor load conversions to in-house pallet configurations (67%).

  No other benefit received as high as a 60% rating.

- **Driver Benefits.** Drivers identified the most important benefits as:
  - getting needed rest and
  - faster unloading.

  These were identified by 81% and 71% of the respondents respectively. No other reason was cited by as many as 50% of the respondents.

- **Relative Importance of Lumping Benefits.** Shippers tended to consistently assign less importance to a similar set of possible benefits than did receivers. This can be explained in part by the fact that lumpers are much less likely to be involved in loading as compared to unloading operations.

Key findings with respect to perceived problems:

- **Carrier Problems.** Carriers identified the major problems associated with lumping as:
  - the high cost of hiring lumpers,
  - increased waiting time to load/unload if lumpers are not used,
  - insufficient reimbursement from the shipper/receiver,
  - forced use of lumpers when not needed, and
  - variations in the cost of hiring lumpers.

Each of these problems was cited as "important" or "very important" by 75% or more of the respondents. No other problem received as high as a 70% rating.

- **Shipper Problems.** Shippers agreed with carriers on two of the most important problems associated with lumping as:
  - high cost of hiring lumpers and
  - forced use of lumpers when not needed.

  Each of these two problems was cited as "important" or "very important" by 70% of the respondents. No other problem received as high as a 60% rating.

- **Receiver Problems.** Receivers differed from carriers and shippers by identifying the major problems as:
  - exposure to liability due to injury to lumpers (62% rated the problem as "important" or "very important"),
  - increase in loss and damage (44%), and
  - unavailability of lumpers when needed (44%).

  No other problem received as high as a 40% rating.

- **Driver Problems.** Reflecting the different concerns inherent in direct personal contact with lumpers versus a purely business standpoint, drivers identified the major reasons for not using lumpers as:
  - cost of lumpers exceeds carrier reimbursements (identified by 64% of the respondents),
  - risks associated with carrying cash to pay lumpers (37%), and
  - driver wants additional income from the loading/ unloading allowance (31%).

  No other problem was cited by as many as 25% of the respondents.

  In terms of specific regions, drivers indicated that they experienced the greatest frequency of lumping-related problems in (areas roughly defined as) the Middle Atlantic (34%) and Midwest States (31%) and to a somewhat lesser extent on the West Coast (23%) and in the South Atlantic States (21%). No other area was identified by more than 15% of driver respondents. [Drivers were permitted to identify more than one area in their responses.]

  Approximately 30% of drivers indicated that the frequency of lumping problems was the "same" throughout the United States.

- **Relative Importance of Lumping Problems.** In general, receivers view lumping as being less problematic than do shippers. This can be explained in part by the fact that

receivers tend to pay less for lumping services, are usually reimbursed when they hire lumpers, and usually do not reimburse motor carriers that hire lumpers. Receivers, with few exceptions, consistently attached less importance to a similar set of problems than did shippers.

Drivers' comments support the view that the nature of involuntary lumping has changed from "physical coercion" (based upon the threats of violence) to a more subtle "economic coercion."

In addition, carriers tend to view lumping problems as being more important than do either shippers or receivers. This reflects the fact that carriers have a greater exposure to the problems associated with lumping since they serve both shipper and receiver facilities.

Key findings with respect to the problem of involuntary lumping:

- **Forced Use of Lumpers Is Not an Uncommon Event.** In 1992, for those carriers using lumpers, approximately one out of five truckloads involved the involuntary use of lumpers.

  Looking closely at the types of loads (i.e., floor, unitized) for which lumpers were used, drivers indicated that for floor loads they were required to use and pay for lumpers without being compensated for it approximately 29% of the time (12% often, 17% always). Similarily, drivers also indicated that, when lumpers were used to breakdown or repalletize loads, approximately 25% of the time they were either "often" (9%) or "always" (16%) required to use and pay for lumpers without being compensated for it.

- **Involuntary Lumping Is an Important Problem.** Involuntary or forced use of lumpers is viewed by both carrier and shipper respondents as an important problem. Eighty percent of carriers and seventy percent of shippers responding indicated that "forced use of lumpers when not needed" was an "important" or "very important" problem.

- **Major Causes of Involuntary Lumping.** Motor carriers indicated the following factors as being the most important causes of involuntary lumping: (1) lack of Interstate Commerce Commission (ICC) enforcement of existing laws, (2) market power favors shippers/receivers, and (3) unrealistic loading/unloading schedules at shipper/receiver facilities. Each of these reasons was cited as being either "important" or "very important" by at least 66% of the respondents. No other factor received higher than a 60% rating.

  Indicating a slightly different perspective, drivers indicated the most important reasons for involuntary lumping as (1) a general attitude of shippers, receivers, and carriers that exploits truck drivers and (2) a lack of ICC enforcement.

Both of these reasons were mentioned by approximately 72% of the drivers. No other reason was mentioned by more than 45% of respondents.

- **Nature of Involuntary Lumping Has Changed.** In general, driver comments support the view that the nature of involuntary lumping has changed from "physical coercion" (based upon the threats of violence) to a more subtle "economic coercion" (based upon the consequences of waiting time).

  The most common methods reportedly being used to force drivers to use lumpers include (1) delays in unloading if a lumper is not used, (2) not being allowed to unload without hiring a lumper, (3) restricting the time permitted to unload, (4) requiring the load to be broken down or repalletized, and (5) permitting the lumper to use handling equipment, but requiring the driver to load/unload manually.

  Drivers report that their most common response (by over 50% of the drivers) to dealing with situations involving coercion is to simply "hire the lumper." No other response was mentioned by more than 10% of the drivers.

- **Motor Carriers Continue to Seek Successful Approaches to Deal With the Problem.** Of the carriers attempting to deal with the problem of involuntary lumping, approximately one-half viewed their efforts as unsuccessful while only 20% rated their efforts as very successful.

Worker Classification Issues Associated with Lumping

One problem associated with using lumpers that appears to be significant and of increasing importance, particularly at a time when the government is seeking additional tax sources, is the liability that users of lumpers face with respect to federal and other taxes. In the last year several motor carriers have been audited by the IRS with respect to this issue. Research into the issue of worker classification, as it relates to exposure to tax liability, produced the following findings:

- **Employee Status For Federal Tax Purposes.** A worker is an employee for federal employment tax purposes if he or she has the status of an employee under the usual common law rules used to determine the existence of an employer-employee relationship. Under these rules, a worker is an employee if he or she is subject to an employer's will and control not only as to what shall be done but also as to how it shall be done.

- **Classification of Workers Is Difficult.** Determining whether a worker is an employee or an independent contractor, which is the essential issue in the misclassification examination, is not a simple matter. For example, IRS Revenue Ruling 87-41 lists 20 common law factors to be used in determining the status of a worker. The courts have developed other factors, however, such as custom in the trade, feasibility and practicability of obtaining from workers needed tax information, intentions of the parties to the work relationship, and whether workers are engaged in a recognized occupation.

- **Increased Efforts By IRS.** The IRS has increased its audit efforts in the area of worker misclassification in the past year. For example, the IRS is increasing its efforts because of an estimated loss in yearly federal tax revenues of at least $1.5 billion due to misclassification of workers.

  The survey results clearly indicated that a number of motor carriers, shippers, and receivers responding to the surveys have been involved with lumpers in a manner which the IRS might interpret as an employer-employee relationship.

- **Tax Liability Not Perceived as Important.** Carriers, shippers, and receivers should be particularly aware of their exposure to tax liabilities and the IRS' increased efforts in this area. Interestingly enough, these parties are aware of possible exposure to tax liability arising from the use of lumpers, but do not consider this potential liability to be as important as other problems associated with using lumpers. Carriers, shippers, and receivers rated the potential exposure to tax liability as no more than moderately important.

- **Few Efforts Taken to Reduce Tax Liability Exposure.** Reflecting their lack of concern about tax liabilities associated with lumping, carriers, shippers, and receivers have not given much indication of taking formal steps to reduce exposure to tax liability in the use of lumpers.

Managerial and Policy Options

The use of lumpers is, to a large extent, the result of making a decision to contract out or to out-source the loading or unloading activity. This study found that motor carriers, shippers, receivers, drivers, and other parties view lumpers and lumping services as producing both important benefits and problems. In general, lumping services appear to provide an important logistical function by providing a mechanism for meeting the needs of shippers, receivers and carriers in performing a necessary function of logistics—loading and unloading of carrier equip-

ment. Furthermore, lumping services provide an alternative for hand loading or unloading by drivers so that they can meet time-sensitive schedules and reduce their exposure to injury as well as fatigue. As a result, lumpers provide social benefits by increasing the safety of the trucking industry and all who share the highways.

At the same time, the findings of this study confirmed the existence of problems associated with lumping as identified in the anecdotal evidence and documented additional problems based on data collected in the study. The evidence collected in this research effort suggests that lumping practices considered illegal under the Interstate Commerce Act as amended by the Motor Carrier Act of 1980 still exist to some degree. Study findings also suggest an emerging problem of tax exposure for users of lumpers due to recently increased efforts by the IRS and state agencies to tap additional tax revenue sources through reclassification of workers. The evidence also strongly suggests that lumping markets do not always work efficiently or fairly because of economic and other factors which restrict supply or artificially increase demand. Economic coercion, no matter how subtle or whether unintentionally created, places the buyer of lumping services at a disadvantage.

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The initiatives outlined below could eliminate, or at least mitigate, some of the problems associated with lumping while recognizing the legitimate and important role lumpers play in the logistics supply chain for food and other products. These initiatives range from those which can be developed and implemented by individual firms to those requiring policy changes through legislation. These initiatives should not be viewed individually, or even collectively, as capable of solving all of the problems associated with lumping; rather they provide a starting point for possible improvements.

Individual Firm Initiatives

Initiative #1 – Undertake Internal Audit of Tax and Liability Exposure

This initiative addresses the tax liability problem associated with the use of lumpers and liability arising from lumper negligence. Carriers, shippers, and receivers using lumpers should undertake an internal audit of their procedures and relationships with lumpers to determine if the IRS or some other agency might classify these lumpers as their employees. The conducting of an audit could be done internally or externally. If done externally, the firm would need to hire an outside person or firm with the requisite expertise. If done internally, attendance at seminars addressing the proper techniques of conducting an audit is recommended. The audit should examine the firm's possible

exposure to personal and property injury liability. Corrective action should be taken if warranted.

Carriers, shippers, and receivers would benefit from this initiative by the resulting reduction in exposure to tax liability. The costs associated with this initiative would be hiring an outside expert or attending a seminar, as well as the increased internal administrative costs.

Initiative #2 – Use Third-Party Loading/Unloading Firms

Carriers, shippers, and receivers using lumpers should consider the use of third-party loading/unloading firms to reduce some of the problems and liabilities associated with lumping. As is the case in any decision to out source an activity to an outside firm, the decision to select a particular firm should follow a careful study of its structure (i.e., the relationship of the third-party firm with its workers) and service record.

The use of a third-party loading/unloading firm may address a number of the problems associated with lumping including: (1) the exposure to tax and other liabilities when using self-employed lumpers, (2) the uncertainty and variation of loading/unloading fees charged by lumpers, (3) driver harassment to use lumpers at unloading facilities, and (4) the need for drivers to carry cash to pay lumpers. The cost of using a third party firm may be higher than using independent casual lumpers, however, and additional administrative costs would be necessary.

Initiative #3 – Improve Selection and Retention Decisions

Shipper/receiver/carrier selection and retention of business relationships should be based upon total supply chain costs including all direct and indirect costs associated with using lumpers. Each party needs to develop a costing methodology and a decision criterion which will indicate if and when serving a particular customer or using a particular carrier becomes unprofitable because of the need to use lumpers or the inefficiencies created by refusing to use lumpers. For example, this methodology could be used by carriers for screening potential customers and eliminating shippers which are not profitable to the carrier.

This initiative addresses a number of problems for the particular carrier including the problems related to the high cost of using lumpers. To the degree that a large number of carriers use this methodology, certain markets where lumping is not working efficiently would be avoided which would tend to increase transportation rates. To the degree that these higher rates will affect the shipper or receiver, an incentive will be created for the shipper or receiver to correct these lumping problems and therefore reduce its overall shipping costs.

Costs associated with this initiative would include developing a costing methodology by the use of internal or external expertise, the risk of the carrier losing an account with a shipper or receiver which has overall profitability, and the risk of the shipper/ receiver losing a good carrier.

Initiative #4 – Use Tri-Party Negotiations and Communications

Miscommunications among the parties regarding the responsibility to load or unload was revealed in this research project. Furthermore, the data indicated that when the responsibility to load or unload is unclear, the amount of lumping usually increases. The potential for the use of unitized shipments to solve some of the problems associated with lumping is also reduced by the lack of effective communications between the shipper and receiver with respect to pallet configurations. The carrier plays a pivotal role as a communications link between the shipper and receiver with respect to this unitization issue. Therefore, carriers, shippers, and receivers need to improve their communications with each other. One step in that direction is to involve the shipper, receiver and carrier in both the communication and negotiation process at the same time. Tri-party negotiations would benefit the parties involved by clearly establishing loading/unloading responsibilities which should result in operating efficiencies. Costs associated with these negotiations would be the organizational costs, subsequent costs of attending meetings, and the risk associated with possibly divulging proprietary information.

Industry Initiatives

Initiative #1 – Develop a Lumper Information System

To address the issues associated with lumper availability, cost, and locations with lumping problems, the motor carrier, shipper, or receiver industries, through their trade associations or in conjunction with a private vendor, could develop an information system. This would identify legitimate third-party loading/ unloading firms for users of lumping services and would provide information on the current rates for the basic types of services performed. Included in this system could be a "lumping hotline" which would provide users with information on locations where lumping problems exist and on current market rates for lumping services.

This initiative would enhance the effectiveness of the Individual Firm Initiatives which suggested using third-party loading/ unloading firms. The lumping market would work better if all of the parties had access to complete and timely information. Costs associated with this initiative would be development of the system and user fees.

Initiative #2 – Develop a Third-Party Loading/Unloading Firm Certification Program

A possible extension of the previous initiative would be the development of a certification program. Again, the industries' trade associations or a private vendor could develop a review process, a training program, and other mechanisms to provide the users some assurance that they won't be exposed to tax and other liabilities and that the price-service options offered are reasonable. This certification program would benefit all users of lumping services and enhance the overall professionalism of the lumping industry.

Costs associated with this initiative would be the development of the certification program, increased administrative costs, and a probable certification cost for third party firms. If the costs of certification are prohibitive, this initiative could carry the potential for restraining the entry of legitimate third party firms.

Initiative #3 – Develop Educational Programs

In order for motor carriers, shippers, receivers, and owner-operators to make informed decisions concerning lumping, they must have access to information on lumping problems and benefits as well as methods to better balance these two. To achieve this information exchange, the motor carrier, shipper or receiver industries, through their trade associations, could develop programs which would educate industry members about lumping issues.

For example, seminars on how to conduct tax liability audits and develop costing methodology could be offered. In addition, information packets regarding lumping issues could be assembled and made available to the various parties. Costs associated with this initiative would be the development and administrative costs of the seminars and information packets which would ultimately be borne by the industry members, and the direct cost to the industry members for attending the seminars.

Initiative #4 – Establish an Inter-Industry Standing Committee on Lumping

To capitalize on the momentum created by this study while maintaining a strong focus on lumping issues and creating a "watch-dog" organization to monitor lumping activities, trade associations representing shippers, receivers, carriers and other parties could develop a standing committee on lumping. This committee would serve as a mechanism for discussing lumping problems that arise, developing relevant research agendas, and lobbying for government initiatives which address lumping

problems. The major costs associated with this initiative would be organizational and operational costs.

Initiative #5 – Develop a Third-Party Loading/Unloading Trade Association

To facilitate utilization of third-party firms and capitalize on their benefits, a third-party loading/unloading firm trade association could be developed to provide buyers of loading and unloading services with better information about the availability and nature of existing loading/unloading firms. Services that this association might provide include matching service providers with users, consulting to individuals on how to establish third-party firms, educational services, and lobbying efforts.

An association could benefit the members by providing recognition and enhancing the professionalism of third-party firms, and arranging pre-scheduled loads. Users of third-party firms could benefit by having better information regarding rates, services, and availability of third-party firms. The major costs associated with this initiative would be organizational and operational costs.

Government Initiatives

Initiative #1 – Increase Enforcement of Existing Laws

To address illegal lumping practices still found in some instances, a new rulemaking or a reopening of the Congressionally mandated study of lumping issues in 1981-82 (Ex Parte 410) could be instituted to look at the lumping issue again to determine the effectiveness of the current statutory provisions and the reasons why they might not be adequate. Ample time has now elapsed to fully realize the impact of deregulation on the motor carrier industry regarding the extent and nature of lumping abuses, the existence of ancillary problems as well as the impacts of changes in logistical practices such as Just-In-Time systems on lumping.

This initiative would not, however, address the problems associated with tax liability exposure. If increased enforcement is found to be necessary, funding for the enforcement must be sought and approved by Congress. Costs associated with this initiative would include the ICC's costs of reopening the case, the participants' costs in the form of legal fees, and any administrative expenses.

Initiative #2 – Declare Lumpers as Independent Contractors

To address the many issues related to the IRS employment classification of lumpers, some legislative action may be re-

quired to clearly define their status. For example, real estate agents and direct sellers now are identified specifically by law as independent contractors. Also, Congress has previously rejected an IRS request that lumpers be declared as employees. If motor carriers, shippers, receivers, and other parties support a proposal that lumpers be declared independent contractors, the chances for legislative change would be enhanced.

This initiative would eliminate exposure to tax liability which is based on lumpers being classified as employees. However, it would not necessarily eliminate the problems associated with coercive lumping. The major costs associated with this initiative would include the organizational expense and efforts of involving all parties in presenting a unified position to Congress, plus any lobbying costs.

Initiative #3 – Urge Congressional Action Regarding a "Shipper Load, Receiver Unload" Policy

To address the problems associated with lumping for motor carriers and drivers, governmental action could be taken to eliminate motor carrier and driver involvement in loading and unloading processes. This initiative, applied to truckload shipments only, involves what may be referred to as driver "no touch" loads. It has broad support among drivers and many motor carrier executives and addresses a number of the problems associated with lumping. Before such a policy should be legislated, however, a comprehensive study should be undertaken to fully investigate all potential impacts on carriers, shippers, receivers, and other affected parties.

Such a policy, if shown to be feasible, would tend to reduce, and perhaps eliminate, forced lumping or coercive lumping involving the motor carrier because instances of coerced lumping would be more easily identified. The problem of effectively monitoring and regulating illegal lumping activities would be reduced and exposure to tax liability would be eliminated for carriers, but not for shippers and receivers. There would also be benefits to society through improved transportation safety as a result of reduced driver fatigue and injury.

This initiative would not eliminate the beneficial aspects of lumping services, whether provided by individuals or third party loading/unloading firms. Rather, increased loading/unloading efficiency is a possible benefit of this initiative.

However, unless shippers and receivers develop efficient methods of loading/unloading carrier equipment, carriers may be forced to consider reinstating detention rules and seek ICC enforcement.

The success of this initiative would depend upon the level of enforcement the ICC or another designated agency is able to provide. Costs associated with this initiative would include the organizational expense and efforts of involving all parties in presenting a unified position to Congress and any lobbying costs. Loading/unloading costs would increase for shippers and receivers, but could be partially offset by reduced transportation rates and increased handling efficiencies.

Glossary of Study Terms

Breakdown – The process of removing some of the freight from a previously stacked pallet due to height restrictions of the receiver's storage bays and/or multiple product varieties stacked on one pallet.

Class I Motor Carrier – A motor carrier earning $5 million or more in annual revenue in 1992.

Class II Motor Carrier – A motor carrier earning between $1 million and $5 million annual revenue in 1992.

Class III Motor Carrier – A motor carrier earning less than $1 million annual revenue in 1992.

General Freight Carrier – A carrier with at least half of its loads classified as general freight in 1992.

Carrier of Agricultural Commodities – A carrier with at least half of its loads classified as agricultural commodities in 1992.

Carrier of Refrigerated Products – A carrier with at least half of its loads classified as refrigerated products in 1992.

Common Carrier – A carrier having at least 50% of their loads moving under common carrier arrangements in 1992.

Contract Carrier – A carrier having at least 50% of their loads moving under contract arrangements in 1992.

Discount/Department Store – A discount or retail department store.

Exempt Carrier – A carrier having at least 50% of their loads involving exempt commodities in 1992.

General Shipper – A firm belonging to the National Industrial Transportation League.

Large Food Manufacturer – A firm belonging to the Food Shippers of America, Inc.

Lumping – The loading or unloading of motor carrier freight by individuals others than the employees of motor carriers, shippers, or receivers.

Non-warehouse Receiver – A service wholesaler or firm operating supermarkets and/or mass-marketing outlets which belongs to the Produce Marketing Association.

Produce Shipper – A firm involved in the production, packing, and/or shipping of perishable products which belongs to the Produce Marketing Association.

Public Warehouse – A general or refrigerated warehouse.

Repalletization – The process of removing all freight from a previously stacked pallet and placing it upon another pallet because the pallet size at the receiver's unloading facility is incompatible with the pallet size on which the product has been shipped.

Self-Employed or Independent Lumper – An unaffiliated individual who provides loading/unloading services for a fee.

Third-Party Loading/Unloading Firm – An independent business firm that specializes in contracting to provide loading and/or unloading services.