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U.S. Department
of Transportation
**Federal Railroad
Administration**

Effects of Disclosure Requirements on Railroad Grain Transportation Contracts

Office of Policy

Appendices

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This volume contains appendices supporting the Grain Contract Disclosure Study conducted for the Federal Railroad Administration by Transmode Consultants, Inc.

1. Report No. FRA-RRP-92-01A	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle Effects of Disclosure Requirements on Railroad Grain Transportation Contracts (Appendices)		5. Report Date	
		6. Performing Organization Code	
		8. Performing Organization Report No.	
7. Author(s) Transmode Consultants, Inc.		10. Work Unit No. (TRAIS)	
9. Performing Organization Name and Address Transmode Consultants Inc. 3400 International Drive, N.W., Suite 2K Washington, D.C. 20008		11. Contract or Grant No. DTR53-90-R-00004	
		13. Type of Report and Period Covered Appendix	
12. Sponsoring Agency Name and Address U.S. Department of Transportation Federal Railroad Administration Office of Policy, RRP-31 Washington, D.C. 20590		14. Sponsoring Agency Code Federal Railroad Administration	
		15. Supplementary Notes Robert E. Martin (Chief, Regulatory Analysis Division), Project Sponsor Scott Greene (Industry Economist, FRA), Project Monitor	
16. Abstract The Staggers Act of 1980 legalized confidential rail/shipper transportation contracts. Their acceptance by railroads and shippers is best demonstrated by the exponential growth of these contracts through the 1980s. In 1986, Congress mandated considerable disclosure in transportation contracts for grain, in response to the demands of some segments of the grain industry. With increased disclosure, the number of contracts began to decline although the volume moving under contract remained about the same. This report analyzes the impacts on railroad grain shipments brought about by Congressionally mandated disclosure rules covering railroad grain transportation contracts. It explores how the disclosure rules affected the propensity of railroads and shippers to enter into these contracts. It examines whether increased disclosure was responsible for the decrease in the number of contracts entered into, and whether disclosure affected the efficiency of grain movements and rail operations. The report also discusses how the different railroads crafted contracting policies to conform to their competitive position in the grain transportation industry.			
17. Key Words railroad, contract disclosure, grain railroad marketing		18. Distribution Statement This document is available to the public through the National Technical Information Service, Springfield, Virginia 22161	
19. Security Classif. (of this report) Unclassified	20. Security Classif. (of this page) Unclassified	21. No. of Pages 116	22. Price

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Appendix A
Background Information

1.0 BACKGROUND ON CONTRACT DISCLOSURE REQUIREMENTS

Appendix A is intended to provide background information on contract disclosure rules, their interpretation by the Interstate Commerce Commission, their regulatory evolution and their current status. This appendix is also intended to provide a timeline for the implementation of contract disclosure rules and a framework for interpreting the railroad market response to disclosure. The appendix underscores the fact that contract disclosure has been, from its legislated inception, highly controversial and subject to intense debate with regard to its interpretation. Indeed, Congress returned to the issue of grain contract disclosure six years after it mandated disclosure in the Staggers Act, to provide its own legislated interpretation of disclosure requirements. The background information which follows is intended to inform and clarify the chapters in the final report. Those chapters deal with the impact of contract disclosure.

1.1 THE STAGGERS ACT AND THE EMERGENCE OF GRAIN CONTRACTING

The principal impetus to railroad contracting came about with the passage of the Staggers Rail Act ("Act") in 1980. Although the Interstate Commerce Commission (ICC) had permitted rail contracts prior to the Act, it was not until after the passage of the Act that railroads began developing commercial programs based to a significant degree on contract commitments.

In 1981 and 1982, rail contracting activity in grain markets began to increase gradually from a minimal base. Grain contracting activity increased markedly in 1983 and 1984 and then more rapidly in 1985 and 1986. Contracting activity peaked in 1987 and fell off rapidly from this high level.

Rail contracting activity in the 1980's was clearly triggered by the Act. Section 208 of the Act clarified, for the first time, the conditions under which rail carriers and purchasers of rail service could enter into contracts. Key provisions of Section 208 include the following: 1) All contracts must be filed with the ICC, along with a summary of non-confidential information which describes contract provisions. 2) Essential contract terms must be presented in contract summary in tariff format. 3) With regard to challenges to contracts,

the Act determines that the Interstate Commerce Commission can initiate a proceeding to review a contract either on its own initiative or in response to a complaint filed either by a shipper or a port. 4) Contracts can be challenged by a shipper, on the grounds that the complaining shipper would be individually harmed by the contract or that the contract would unduly impair the rail carrier's ability to provide common carrier service to the shipper. 5) A port can challenge a contract on the grounds of "unreasonable discrimination", but not on grounds of impairment of common carrier service ability. 6) In the arena of agricultural commodities (including forest products and paper) shippers can challenge contracts on multiple grounds, including; a) "Unreasonable discrimination", if the rail carrier refuses to enter into a similar contract with the complaining shipper; b) Impairment of the rail carrier's ability to provide common carrier service to the shipper; and/or c) Destructive competitive practice.

With regard to approval/disapproval of contracts, the Act determines that: 1) If the ICC does not initiate an investigation within 30 days after the contract is filed, then the contract will stand approved. 2) If the ICC does not disapprove the contract within 60 days, after it is filed, then the contract is automatically approved.

The Act further mandated that the ICC must establish special rules, under which essential elements of contracts will be made available to the general public. The Act further requires that the quantity of equipment that can be utilized in contracts involving agricultural commodities shall be limited to 40% of the capacity of a railroad's owned or leased equipment fleet. The 40% is to be determined by major car type. For larger agricultural shippers (those who originate 1000 or more cars), not more than 40% of the carrier-owned or leased equipment used by that shipper, on an average, over the previous three years, can be used for a contract between that shipper and the railroad, without prior ICC approval.

1.2 INTERSTATE COMMERCE COMMISSION'S INITIAL INTERPRETATION AND IMPLEMENTATION OF SECTION 208 OF THE STAGGERS ACT

The ICC issued interim rules on October 24, 1980, (to be effective November 5, 1980) to implement the provisions of Section 208 of the Act. Some of the key issues addressed in these rules involved contract disclosure.

The ICC interpreted the Act's provisions relating to disclosure to mean that contract summaries, but not the contracts themselves, must be made available to the public (first-tier disclosure). In order to gain access to the actual contract (second-tier disclosure), the ICC required a complainant to demonstrate: 1) That the complainant is likely to succeed on the merits of their complaint; or 2) That the matter complained of could not be proven without access to the complete contract.

The ICC required the following information to be disclosed in contract summaries: 1) Names of railroads involved; 2) Commodities involved; 3) Duration of contract; 4) Mileage of movement involved; 5) Number of railroad cars (owned or leased), by major car type, utilized in the contract; 6) Base rate; and 7) Existence of (but not the terms of) special features in the contract.

For contracts involving ports, the Commission also required the identification of the port. For agricultural commodities (including forest products and paper), the ICC required the identification of origin and destination stations. In this proceeding the Commission defined agricultural commodities as "unmanufactured agricultural products".

Since the major basis for a complaint, in most cases, required the complainant to prove that a contract would impair the railroad's ability to provide common carrier service to the complainant, the ICC interpreted this ability as relating primarily to the carrier's car supply and the impact of contract commitments on available supply.

On December 29, 1980, the ICC issued a second order which stayed the interim rules that became effective November 5, 1980. In their place the Commission issued a notice of proposed rulemaking, which treated the interim rules as proposed rules, and extending the deadline for comments to January 8, 1981.

On October 8, 1982, the ICC issued final rules for the filing and adjudication of rail contracts. These rules became effective January 4, 1983. The final rules modified the proposed rules, discussed above, in the following major respects: 1) The new rules modified the definition of the term "contract": a) To include only contracts made pursuant to Section 10713 of the Act; and b) To treat an amendment to a contract as a new contract. 2) The commission permitted the right of appeal before the effective date of the contract, if the original decision were made by the Suspension Board. The proposed rules did not provide for an appeal. 3) The commission had proposed in its preliminary rules, that only the originating railroad could file a contract and contract summary. The final rules left it to the carriers to decide which carrier would issue and file the contract. 4) The ICC prescribed a revised format for title pages, and a new numbering system, both for the contract and contract summaries.

The major substantive changes in the final rules related to the contents and format of the contract summary. The most significant of these related to rail car availability and to a reduced information requirement covering non-agricultural contracts. The mileage reporting requirement in the proposed rules was also deleted. For agricultural commodities (including forest products and paper), this requirement was replaced by origin and destination information for all movements included in a contract.

The new rules also expanded rail car availability data requirements. The new requirements included the following: 1) Use of car days, in lieu of cars, at the carrier's option. 2) "Available" owned and leased cars, and the number of cars that will be used to fulfill the contract, by car type. 3) Requirement for the carrier, if a complaint is filed, to immediately furnish the ICC: a) Total bad order cars; b) Assigned car obligations; and c) Free running cars.

This data was intended to assist the ICC in its determination of the ability of individual carriers to comply with its common carrier obligation. Car data could be omitted if: 1) The shipper supplied the cars; or 2) The contract was for services that did not entail car supply. For agricultural commodities, in addition to the base rate, the ICC required the following data: 1) Movement

type (e.g., single, multiple-car, unit-train); and 2) Minimum annual volume.

1.3 EXEMPTION OF PAPER, WOOD PULP, WOOD CHIPS, AND PULPWOOD (1983)

On January 14, 1983, the Rail Safety and Service Improvement Act of 1982 exempted paper, wood pulp, wood chips and pulpwood from the equipment contract limitations applicable to agricultural commodities under the Staggers Rail Act. However, these limitations continued to apply to other forest products.

On May 26, 1983, the ICC exempted paper, wood pulp, wood chips, and pulpwood from the equipment limitation provisions of the final rules issued on October 8, 1982, so as to comport to provisions of Section 502 of the Rail Safety and Service Improvement Act of 1982. On August 15, 1983, the ICC amended the reporting requirement for contract summaries, to conform to the changes made on May 26, 1983.

1.4 COMMISSION'S SUBSEQUENT INTERPRETATION OF SECTION 208

In response to a court decision in *Water Transport Association v. ICC*, 722 F. 2d 1025 (2d Cir. 1983), the ICC reopened the *Ex Parte 387* proceeding. The commission issued interim rules and procedures which apply to discovery when a party with standing to challenge a contract requested secondary disclosure. These changes were made effective July 16, 1984.

The court characterized the disclosure procedures as a two-tiered process. The first tier referred to the contract summaries available to the public. The second tier related to the potential discovery of the actual contract terms. The court found that the rules relating to second-tier discovery were too restrictive. To conform to the court's ruling, the ICC dropped the two conditions it had earlier imposed for a second-tier discovery, namely, that: 1) The petitioner must demonstrate that it had a likelihood of succeeding on the merits of the case; and 2) the matter complained of could not be proven without access to additional contract information. Instead, the ICC required that, to achieve second-tier disclosure, a petitioner must: 1) Have standing to

file the complaint; 2) Be affected by the contract; and 3) Demonstrate that there is a need for access to additional contract information in order to perfect the complaint.

The ICC also required that both the request for discovery and the complaint be filed at the same time. The commission established the following schedule for administering contract complaints. The table below represents days from the date the contract summary and contract are filed.

<u>Event</u>	<u>To Be Completed By</u>
Discovery request and complaint filed	18th day
Replies to discovery request and complaint	23rd day
Suspension Board to rule on discovery request	26th day
Appeal, if any, to Board's decision	28th day
Commission rules on Board's decision	30th day
Amended complaint, if discovery approved	35th day
Carriers reply	40th day
Commission approves/disapproves contract	60th day

On April 3, 1986, the ICC issued proposed rules to govern rail contract disclosure for transportation of raw grains and soybeans. These were rules jointly agreed to by the National Grain and Feed Association (NGFA) and the Association of American Railroads (AAR). These rules were designed to achieve several jointly beneficial results, namely: 1) To modify rail contract discovery, by instituting a "bridge" procedure called "informal disclosure". This procedure was expected to lead to more constructive discussions between the carrier and the shipper, and to eliminate the need for ICC intervention (through a formal complaint). 2) To make the contract summary information more comprehensive, to enable the shippers to determine whether they had reasonable basis for a complaint. 3) To institute new procedural requirements for contract discovery and complaints.

The proposed rules included a process of informal disclosure, whereby any shipper of raw grain or soybeans who might be affected by the contract

would be allowed, upon making such a showing and upon indication by the carrier that it had no objection, to obtain from the carrier or the ICC the following essential terms, included in the contract: 1) The actual minimum volumes, if any; 2) Line-haul rate or discount, including incentive rates or discounts; 3) Time periods for filling the minimum volumes, if any; 4) Transit points, if any; 5) Service commitments, if any; 6) Liquidation damages or penalties, if any, for non-performance; and 7) Any other features -- such as those pertaining to demurrage, private car compensation, or payment terms -- which have a bearing on the value of the contract to either the shipper or the carrier.

When a controversy involving discovery or disclosure could not be resolved, the shipper could petition the ICC to require disclosure, and the carrier had the right to reply. In addition to information required under current rules, the shipper petition would include: 1) Information regarding negotiations with the carrier; 2) Data showing willingness to accept similar terms and/or data that the contract constitutes a destructive competitive practice; and 3) Information showing how the petitioner is affected by the contract, in particular information which explains how it can actually/potentially cause injury to the shipper.

The contents of the contract summary required specific information on commodities to be transported and on specific origins and destinations, including specifically ports.

1.5 SUBSEQUENT LEGISLATIVE INTERPRETATION: THE CONRAIL PRIVATIZATION ACT

On October 21, 1986, Congress enacted the Omnibus Budget Reconciliation Act of 1986 (Public Law 90-509), which included the Conrail Privatization Act (the "Conrail Bill"). Section 4051 of this Act modified the rules governing disclosure for agricultural contracts, by amending Section 10713 of the Interstate Commerce Act itself.

Whereas the existing provision of Section 10713 directed that "a summary of the contract containing such nonconfidential information as the Commission prescribes" shall be filed with the ICC, the revision to this section

under the Conrail Bill identified additional and more specific information that had to be filed with the ICC in the contract summary, in tariff format. This information was to include: 1) Shipper identity; 2) Specific origins, transit points, destinations, and other shipper facilities; 3) Duration of the contract, including provisions for optional extension; 4) Actual volume requirements, if any; 5) Whether contract service began under the contract before the date such contract was filed with or approved by the ICC; and 6) The date on which the contract became applicable to the contract services.

The Conrail Act added several new requirements to first-tier disclosure: 1) shipper identity, 2) transit points, 3) contract duration and optional extension, 4) actual volume information, and 5) other shipper facilities requirements. The ICC was also directed to provide liberal discovery to shippers seeking remedies under this section. The Congress also directed that any amendment, supplement, or change to any of the items listed above, including extensions of a contract, should be treated as a new contract for filing purposes.

1.6 INTERSTATE COMMERCE COMMISSION'S INTERPRETATION AND IMPLEMENTATION OF THE CONRAIL PRIVATIZATION ACT

The ICC issued interim rules on December 15, 1986, to be effective January 22, 1987, to implement the changes legislated by Congress in the Conrail Privatization Act of 1986. The ICC also incorporated into the interim rules the changes mandated by the 2nd Circuit Court in *Water Transport Ass'n v. ICC*, 722 F. 2d 1025 (2d Cir. 1983) and in the AAR/NGFA proposal. Additionally, the ICC took all existing rules located in various sections of the CFR, and consolidated them into one sub-part of the CFR, Part 1313.

The new rules addressed several additional issues. The Conrail Act mandated specific disclosure of contract terms in the contract summary filed with the Commission. For example, even though the existing rules required disclosure of origins and destinations, in many cases vague language such as "all points" in a given state or region were still used. The new interim rules required disclosure of specific points, even if the contract itself included only

broad territorial descriptions. Similarly, the interim rules required specific commodity descriptions in the summary, even if vague descriptions (such as "grain") were used in the contract.

The new rules also addressed the retroactive effectiveness of contracts. Under the new legislation, carriers were required to disclose whether rail service had commenced prior to summary filing or contract approval, and, if so, the date on which such service commenced. This was consistent with ICC's decisions in *Ex Parte 387*, Sub-200 and Sub-958, except that now this information had to be disclosed in the contract summary.

Further the ICC required the tariff provisions which would apply in the absence of the contract to be disclosed, rather than the actual rates and charges. In addition, all contract amendments, supplements, or changes were treated as new contracts, requiring the filing of new and complete contract summaries.

The ICC did not extend, *in toto*, the new first-tier disclosure for agricultural commodities to forest products and paper. Rather, the following requirements were made applicable to these later commodities: 1) Specific disclosure of origins and destinations; 2) Specific identification of commodities; 3) Base rate disclosure, as for agricultural commodities; 4) Disclosure whether rail service commenced prior to filing or approval, and, if so, the date on which such service commenced; and 5) Filing of complete summaries upon contract amendment. Rules relating to base rates, commodities, and disclosure of whether rail service was provided before filing or approval, was made applicable to port movements also.

The rulemaking also addressed several issues involving informal discovery. To avoid conflict with Section 1 of the Sherman Act, which prohibits agreements among firms to exchange price information, the ICC restricted the use of any material disclosed in the informal discovery process to proper regulatory purposes only. In its rulemaking, the Commission clarified that contracting parties, by mutual consent, could not abrogate Sherman Act Restrictions. Secondly, instead of leaving it to the good faith of the railroad involved, as recommended in the AAR/NGFA compromise, the ICC made

informal disclosure mandatory. The ICC required release of underlying contract information upon a complaining shipper's showing, and a carrier's good faith determination, that such shipper is an "affected party". The standards for determining "affected party" were the same as for formal discovery.

The rulemaking also addressed issues regarding secondary disclosure. The ICC had issued interim rules for formal discovery in 1984, to comply with the Second Circuit Court's mandate. These rules, which remained in force, were clarified and revised in the 1986 rulemaking. The key changes reflected in the new rules affected the following areas:

Affected Party. In light of the Congressional mandate in the Conrail Bill and the Second Circuit Court decision, the 1984 test for "affected party" was deemed too restrictive by the ICC. The ICC, therefore, dropped the requirement that, in order to demonstrate that the complainant is an affected party, it must: 1) Establish that it will be harmed by the contract; and 2) Show how the contract could actually or potentially cause injury.

Instead, the ICC defined an "affected party" as one which is an actual or potential participant in the relevant market. It eliminated the injury requirement for the test. Basically, a petitioning shipper, under the new interim rules, was required to show that it was ready, willing, and able to participate in those terms of the contract that it knew about via first-tier disclosure. The ICC required the following information to make this determination: 1) Nature and size of petitioners business; 2) Relevant commodities shipped/received; 3) Comparison of commodities, traffic patterns, and serving carriers for the petitioner, with those identified in the contract summary; 4) Ability to ship at a time generally simultaneous with the contract at issue; and 5) Other appropriate information.

Demonstrated Need. The demonstrated need requirement was eliminated for agricultural shippers, due to the extensive first-tier disclosure requirements for agricultural commodities contracts. It was, however, retained in the new interim rules for forest products, paper, non-agricultural port traffic, and other

commodities.

Prior Negotiation. This requirement was aimed at eliciting information that the shipper had in good faith attempted to negotiate a contract, similar to the one at issue, with the carrier. This rule, which had been in place since the inception of disclosure rules in 1981, was eliminated, since the ICC felt, based on experience, that it was unworkable.

Complaint Procedures. The procedures were modified to accommodate recommendations made by the AAR/NGFA. The new interim rules required only a skeletal complaint by day 18, instead of the full complaint. The latter was due by day 39, along with the case-in-chief (now due by day 35). Replies to the complaint/case-in-chief were due by day 46 (instead of day 40). This rule change was aimed at relieving the complainant's burden during the first 18 days, before they knew specifically (through second-tier disclosure) that they wished to seek a similar contract for themselves.

1.7 SUSPENSION OF RULES RELATING TO ORIGIN/DESTINATION INFORMATION FOR AGRICULTURAL COMMODITIES

On February 5, 1987 the ICC suspended the interim rules relating to disclosure of origin/destination information in contract summaries for agricultural commodities, forest products and paper contracts. These rules had required specific origin and destination points to which the contract applied. The suspension followed a joint petition by the AAR and NGFA, which was also supported by shippers, that compliance with the new requirements on origin and destination disclosure would substantially increase the burdens of filing, without providing additional or useful information to shippers; went beyond the intent of the Conrail Act; required more information than that needed in publicly-filed tariffs; and contradicted the structure and purpose of Section 10713. The ICC reinstated the prior interim rule that required sufficient information to allow a party to determine whether it was affected. However, the ICC emphasized that it would not accept use of such general phrases as

"various points in Kansas", but would accept reference either to all points in a State or to a tariff. This change was effective February 5, 1987.

1.8 FINAL DISCLOSURE RULES

The ICC issued final rules regarding contract disclosure, effective March 22, 1988. Some of the key provisions of the final rules and issues related to them include the following:

Definition of the terms "contract" and amendment. The rules retained the definition that an amendment is deemed to be a separate and new contract, and consequently all remedies against the contract are revived, and review is again available when an amendment is filed. Although the ICC agreed with the NGFA and AAR that the scope of review of amended contracts should be more limited than the original review, it did not attempt to define the scope of review in the final rules.

Time limits for filing. The ICC declined to adopt any specific time limit for filing. It also decided to continue permitting the retroactive filing of contracts without any specific time limit, since it felt that the benefits this allowed in terms of flexibility outweighed the potential for abuse. The ICC felt that adequate incentives existed on both the carrier side and the shipper side, in the form of benefits provided by a contract. The Commission believed that carriers would file promptly in their own interests, and the shippers would pressure them to do so.

Shipments moving prior to date of contract amendment. The ICC reversed its prior decision that contract amendments are outside its jurisdiction because a contract, once approved, is not subject to the relevant portions of the Interstate Commerce Act. By treating amendments as new contracts, the ICC felt it had the same jurisdiction over amendments as it had over new contracts. Consequently, the same rules concerning movements prior to the date of contract amendment would apply as were applicable to new contracts.

Specific commodity. The ICC decided to continue the requirement for specific commodities to be listed in the contract and contract summaries, for the benefit of small shippers who supported this rule. Larger shippers generally tended to oppose it. Both AAR and NGFA had suggested some broader categorization in some cases (such as the term "grain"), and the use of the same description in the contract and the summary. The ICC rejected this viewpoint.

Shipper identity. Since the grain can be sold several times between the date of the contract and the date of the actual movement, making it often difficult to identify the name of the responsible party until after the summary is filed, the ICC limited the identification of the parties listed in the contract summary to those known at the time the contract is entered into.

Specific origins and destinations. The interim rules had originally required each specific origin and destination to be specified in the contract. This was felt to be too burdensome. In the final rules, the ICC allowed the use of tariff references for origin/destination information. If only tariff references were used in the contract, the ICC required that the summary must state, in addition to the tariff reference, the States in which the origins/destinations are located.

Shipper facilities. The Conrail Act mandated that shipper facilities be shown on the contract summary. The interim rules had required identification of each shipper facility used for contract origins, destinations, transit points, or other facilities subject to the contract. AAR and numerous shippers had objected to the broad sweep of this rule. The ICC accepted the KGFDA interpretation, and modified the rule in the final regulations to include disclosure of those locations (other than the origins and destinations discussed above) known at the time of contracting, or identified in the contract, that satisfied the volume requirements of the contract.

Contract duration. The interim rules were left intact. These rules were intended to identify the contract implementation date and the exemption

application date for prior shipments.

Base rates and charges. Here again, the interim rules that required identification of the specific base rates or charges, or identification of the specific tariff provisions that would apply without the contract, were left intact.

Volume. The interim rules had required the summary to show the amount of guaranteed percentage, if any. AAR and NGFA argued that failure of Congress to include this in the Conrail Bill implied acceptance by Congress of the prior rules that showed this in the "special features" provision. The ICC returned this to the "special features" provision, where only the existence of a provision has to be reported, but not the terms nor the amount.

Forest products and paper. The interim rules were modified, as follows: 1) The provision concerning optimal extension was eliminated. 2) Provisions related to escalation, minimum volume requirements, and movement were revised to show whether or not those features existed in the contract, rather than the precise terms and conditions. 3) The final rules adopted for agricultural commodities for origin and destination information, and for commodity descriptions, were also mandated for forest products and paper.

Port traffic (other than agricultural commodities, forest products, and paper). The rules for forest products and paper were also made applicable to port traffic, except for origin and destination information (which was less specific for port traffic) and car data (that was not required to be reported). For port traffic, the name of the port and the tariff mileage, rounded to the nearest 50 miles, must be disclosed.

Other commodities or services not involving a port. The rules for forest products and paper, insofar as they relate to carrier names, contract duration, and rail car data, also apply to other commodities. Specific commodity descriptions are not required (only general descriptions); nor are data on origins

and destinations, base rates and charges, nor special features required for other commodities.

Informal discovery. The interim rules required informal disclosure as a prerequisite to formal discovery. A potential complainant was required to submit informal discovery requests to a carrier prior to filing a discovery request at the ICC. The request to the carrier had to contain the same information as needed for a formal discovery before the ICC. The carrier had then to act in "good faith" in granting or denying discovery, and use the same standards the ICC would use in determining whether discovery is permitted.

Both the AAR and NGFA opposed this -- on grounds of cost and complexity -- and recommended that the informal disclosure procedure previously agreed to by the AAR and NGFA be implemented instead. The ICC agreed and, therefore, revised the interim rule to permit informal disclosure, in lieu of mandating informal discovery, as a prerequisite. The final rules stated that: 1) A petitioner *may* request discovery from the carrier; 2) A carrier *must* promptly grant or deny the request; 3) Agreements between carriers and shippers for informal discovery are permitted under these rules. This removed any problems with Section 1 of the Sherman Act. The revised rules also eliminated potential conflicts over the "good faith" of the carrier.

Injury. In the interim rules, the ICC eliminated the "injury" test, the "demonstrated need" criterion, and the prior negotiation requirement for contract discovery. This was in response both to the Conrail Act, that mandated more "liberal discovery" for agricultural commodities, and to the Second Circuit Court decision. However, a large number of groups responding to the interim rules, including the AAR, NGFA, KGFDA, USDOT, the American Food Industry Association, etc., supported some sort of injury showing for contract discovery. The NGFA argued, and the ICC agreed, that "liberal discovery" applied to the extent of discovery when granted, not to whom granted. The ICC, however, decided not to use the term "injury", because of the debate it had caused and the connotation of specific and identifiable harm. Instead, in the final rules, the ICC added a requirement for a petitioner

requesting discovery, to show how it could be "affected", either actually or potentially, by the contract terms.

Prior negotiation. The ICC also refused to reinstate the "prior negotiation" requirement for discovery, on the grounds that: 1) These were impossible on the basis of first-tier disclosure; 2) This requirement confused the criteria for disclosure with factors for relief; and 3) In the WTA decision, the Court did not intend first-tier disclosure to be a basis for negotiations.

Non-agricultural commodities. Most shipping interests favored the pre-interim rules (i.e., the 1984 rules) that had stricter standards for discovery, including the injury test. The ICC felt that the revisions to the interim rules brought the final rules closer to the 1984 interim rules. Also, the "affected party" test was basically the same as the injury test. The "demonstration of need" test included in earlier rules for non-agricultural commodities was retained in the final rules. This test was eliminated in the interim and final rules for agricultural commodities, since almost all data, except price, are disclosed under the first-tier disclosure for agricultural commodities.

1.9 CONTRACT DISCLOSURE TIMELINE

As the discussion above reveals, the interpretation and implementation of disclosure requirements required much more time than either the Congressional authors of the Staggers Act or the carrier/shipper community originally anticipated. The time line on the page which follows marks key developments in the evolution of contract disclosure requirements. This information offers an historical framework for tracking parallel developments in the commercial arena.

EVOLUTION IN CONTRACT DISCLOSURE TIMELINE OF KEY EVENTS

OCT 14, 1980	STAGGERS RAIL ACT
JAN 4, 1983	FINAL RULES (ICC)
JAN 14, 1983	EXEMPTIONS OF PAPER, WOOD PULP & CHIPS AND PULPWOOD FROM DISCLOSURE LIMITATION
OCT, 1983	COURT DECISION WATER TRANSPORT V. ICC
JUL 16, 1984	INTERIM RULES
APR 3, 1986	ICC PROPOSED NEW RULES ON NEW GRAINS & SOYBEANS BASED ON NGFA/AAR AGREEMENT
OCT 21, 1986	CONRAIL PRIVATIZATION ACT
DEC 15, 1986	INTERIM RULES (ICC)
MAR 22, 1988	FINAL RULES FOR CONTRACT DISCLOSURE (ICC)

Appendix B
Contract Data

Railroad Contract Data Base File Format

The contract data base was created from information taken from the original ICC contract summaries for the period 1987 - 1990. A random sample was chosen (20% of the total contracts) and the contracts were analyzed on the basis of the fields described below.

Field	Name	Type	Length	Description	Possible Responses
1	Num	Text	10	Unique Contract Number	
2	PRRR	Text	3	Primary Railroad	UP (Union Pacific)
3	SRR	Text	6	All Secondary Railroads	CSXCR (Both CSX and CR serve as secondary railroads in the contract)
4	Start	Date		Effective Date	07/04/88
5	End	Date		Termination Date	07/04/89
6	Length	Integer		Computed Number - "End Date" - "Start Date"	364 (Number of days contract is in force)

Field	Name	Type	Length	Description	Possible Responses
7	Shipper	Text	30	Shipper Name	The Andersons
8	Commod	Text	7	Major Commodities Shipped	CWSYOBT C = Corn W = Wheat S = Sorghum Y = Soybean O = Oat B = Barley&Rye T = Other
9	Serv	Text	7	Services Contracted	USMO U = Unit Train S = Single Car M = Multiple Car O = Other
10	Scomm	Text	5	Shipper Commitments	UPNVO U = Use Private Eqpt P = Percent Total Volume N = None V = Annual Volume Minimum O = Other
11	Tender	Integer		Minimum Tender	306090 (Minimum Tender 30,60,90)
12	Ccom	Text	8	Carrier Commitments	TRGSVO T = Tariff R = Refund G = Guaranteed Car Supply S = Special Contract Rate V = Volume Incentive O = Other

Field	Name	Type	Length	Description	Possible Responses
13	Org	Text	6	Origin Type	IOACST I = Interline O = Other A = All elevators on carrier system C = All elevators in specific states S = Specific country elevators T = Specific transit elevators
14	Ost1	Text	2	Origin State 1	KS (Specific Origin States listed in the contract were captured- up to six)
15	Ost2	Text	2	Origin State 2	"
16	Ost3	Text	2	Origin State 3	"
17	Ost4	Text	2	Origin State 4	"
18	Ost5	Text	2	Origin State 5	"
19	Ost6	Text	2	Origin State 6	"
20	Dest	Text	6	Destination Type	DATSEO D = All destination elevators on carrier system A = All export elevators served by carrier T = All transit elevators served by carrier S = Specific transit elevators E = Specific export elevators O = Other
21	Dest1	Text	2	Destination State 1	KS (Specific destination states in contract were captured - up to six)

Field	Name	Type	Length	Description	Possible Responses
22	Dest2	Text	2	Destination State 2	"
23	Dest3	Text	2	Destination State 3	"
24	Dest4	Text	2	Destination State 4	"
25	Dest5	Text	2	Destination State 5	"
26	Dest6	Text	2	Destination State 6	"
27	Move	Text	6	Movement Type	EDOIF E = Export D = Domestic O = Other I = Import F = Feed Lot
28	Special	Text	4	Special Features	DSBOC D = Demurrage S = Switching B = Billing O = Other C = Credit Terms
29	Note	Note		Any Extra Information Not Captured in Previous Fields	Captured special terms or provisions not accounted for in previous fields

Appendix C
Shipper Segmentation

SHIPPER SEGMENTATION

The following are the criteria used to group the grain firms:

I. LARGE NATIONAL/INTERNATIONAL FIRMS

- A. ***Firms serving all markets*** --There are very large grain firms that handle all types of grain and engage in domestic and international merchandising, livestock feeding, grain and food processing and own or lease substantial transportation equipment. There were only three firms in this group.
- B. ***Large international grain firms*** --These firms engage in most but not all of the activities included in IA. They are smaller in terms of sales and volume of grains than the firms listed in IA.

II. REGIONAL FIRMS

These firms tend to operate on a regional rather than on a national and international basis and tend to specialize in the grains grown in the geographic area they serve.

- A. ***Firms controlling receiving facilities*** --These firms buy and receive grain from county elevators located within their geographic area and generally restrict their activities to grain merchandising. Some may engage in grain processing activities and few sell in the export markets.
- B. ***Processing firms*** --The major activity of these firms is to convert grains into processed products such as beer, soybean meal, flour, etc.
- C. ***Feeder firms*** -- These firms generally own or control their own livestock or poultry. They process raw grain into feed, principally for company-owned livestock or poultry.

III. MERCHANDISING FIRMS

The major activity of these firms is to buy and sell grain and to earn a profit from arbitrage. Some of these firms own and operate grain handling facilities.

IV. BROKERS

These firms earn revenue from buying and selling grain on a commission basis. They usually do not take ownership or possession of the grain.

V. ELEVATORS

The major activities of these firms are to buy, receive, store, and condition grain in their own facilities and sell and ship later when prices increase.

A. **Terminal elevators** -- These firms, which typically own large grain storage facilities -- > 5,000,000 bushels -- buy grain from farmers and store, condition and ship the grain in unit grain trains.

B. **Large country elevators** -- These firms, which also typically own large grain storage facilities -- > 5,000,000 bushels -- are owned by a combination of local firms.

C. **Small country elevators** -- These firms, which own smaller grain storage facilities, buy grain from farmers to store and merchandise. This grain is often shipped out in multiple car rail shipments.

Appendix D
Shipper Classification

I. LARGE NATIONAL/INTERNATIONAL FIRMS

A. FIRMS SERVING ALL MARKETS

Cargill
Archer Daniels Midland (ADM)
ConAgra

B. FIRMS WITH SMALLER SCOPE THAN FIRMS IN CATAGORY A

Bunge
Continental Grain
Ferruzzi USA, Inc.
Garnac Grain Co., Inc.
Garvey Elevators Inc.
Italgrani Elevators
Louis Dreyfus Corp.
United Grain Corp.

II. REGIONAL FIRMS

A. CONTROLLING RECEIVING FACILITIES

Anderson Grain Corp.
Barlett and Company
Demeter, Inc.
Farmers Rice Milling Co.
Harvest States Cooperatives
Indiana Grain and Feed Assn.
Lansing Grain Co.
Lincoln
Manitoba Pool Elevators
MFC Services
Mid-State Terminals
Riceland Foods, Inc.
Scoular Grain Co.
Scroggins Grain Co.
Union Equity Inc.

II. REGIONAL FIRMS

B. PROCESSING FIRMS

A.E. Staley	Jack Daniels
A.G.P. Grain Co.	Kellogg Commission Co.
Acme Evans	Kentucky Agricultural Energy Corp.
Anheuser-Busch Companies	King Milling
Archer Daniels Midland Co.	Knight Seed
Arrowhead milling	Mayfield
Bay State Milling	Mayfield Salvage
Big V Feeds	Mennell Milling
Central Connecticut Co-op	Miller Brewing
Central Soya	Mont Eagle Mills, Inc.
Cereal Byproducts	Morrison Milling
Cereal Food	Nabisco Brands, Inc.
Coors	National Starch and Chemical
CPC International	O.H. Kruse Grain and Milling
Facso Mills	P&S Rice Mills, Inc.
Feed Ingredient Trading Corp.	Pendleton Flour Mills, Inc.
Frito-Lay Inc.	Pennington Enterprises
General Mills, Inc.	Perdue Farms, Inc.
Gold Kist	Purina Mills, Inc.
Great Western Malting Co.	Quaker
Guthrie Cotton Oil Co.	Quincy Soybean
Hill's Pet Products	Rahr Malting Co.
Honeymead Products	Roanoke City Mills, Inc.
Idaho Milling	Schreier Malt
International Multifoods Corp.	Uncle Ben's, Inc.
Interstate Commodities, Inc.	Winiger White Corn

II. REGIONAL FIRMS

C. FEEDER FIRMS

Arizona Grain, Inc.	Murphy Farms, Inc.
Associated Farms, Inc.	Neuhoff Farms
Cuddy Farms	Peco Farms
Egg City	Poultry Growers, Inc.
Foxley Grain Co.	Rocco Farms, Inc.
Gold Kist	Seaboard Farms
Harris Feeding	Townsend, Inc.
Holly Farms Foods, Inc.	Tyson Foods
McCoy Farm Service, Inc.	Valley Grain & Elev. Co.
McElhaney Cattle	Venus Grain
McElrath Poultry	Vincente Valdez
Mid-South Feed, Inc.	Zacky Farms
Monfort	Zephyr Feed
Mumme's	

III. MERCHANDISING FIRMS

Agrex, Inc.
Benson-Quinn Company
Consolidated Grain & Barge Co.
DeBruce Grain, Inc.
Evans Grain Company
Goodland Cooperative Equity
Interstate Grain Corp.
Marshall Burbin Co.
Merchants Grain, Inc.
Montana Merchandising Inc.
MWCG Export Co.
R. F. Cunningham & Co., Inc.
Rickel, Inc.
Ries Commodities
River/Gulf Grain Company
Wolcott & Lincoln, Inc.
Wright-Lorenz Grain Co., Inc.

IV. BROKERS

Parrish & Heimbecker, Inc
Reynolds Brokerage Co., Inc.
Springbrook Grain Company
Wilbur Ellis

V. ELEVATORS

A. TERMINAL ELEVATORS

Agmax, Inc.

Agremp Waterloo Terminal Inc.

Arizona Grain, Inc.

Avon Grain Co.

Clinton Landmark, Inc.

Consolidated Grain & Barge Co.

Farmer Grain Terminal

Foxley Grain Co.

Hyline Seven Cooperative Marketing, Inc.

B. LARGE COUNTRY ELEVATORS

Didion, Inc.

Great River Grain Corp.

Hunting Elevator Co.

Irsik and Doll Feed SVC Co.

Kokomo Grain Co., Inc.

Perryton Equity Exchange

Peterson Grain Co., Inc.

United Purchasers

V. ELEVATORS

C. SMALL COUNTRY ELEVATORS

Adrian Equity
Agri Mark Farmers Co-op
American Agrivest
Anderson & Mandle Grain Co.
B&W Co-op, Inc.
Banner Co-op
Beachner Grain
Beaver Creek Co-op
Bobb Brothers, Inc.
Bottineau Farmers Elevator
Bruce Grain Elevator
Buckeye Ag-Center, Inc.
Burlington Equity Co-op
CF Hill Grain
C.B. Constantini
Canmar Grain
Carlson Grain
Carroll County Grain Growers
Central States Enterprises, Inc.
Chaffee Lynchburg Farmers
Colfax Farmers Elevator
Conway Grain and Supply
Coshocton Grain Co.
Crete Grain Company, Inc.
Cuadill Elevator

Davidson Grain
DeBruce Grain, Inc.
DeLong Company
Deseret Mill and Elevators
Dubois County Farm Bureau
Elbing Grain
Emporia Grain Co.
Equity Elevator & Trading Co.
Farm Choice, Inc.
Farmer Co-op Association
Farmer Elevator of Narrka
Farmers Co-op Exchange
Farmers Elevator Co.
Farmers Grain
Fessenden Co-op Assn.
Foxhome Elevator
Frank Bailey Grain Co., Inc.
Fred Webb, Inc.
Frenchman Valley Farmers Co-op
Fruita Co-op
Garden City Co-op
Greenly Elevator
Haddam Elevator
Hancock Elevator
Hatcher Milling

V. ELEVATORS

C. SMALL COUNTRY ELEVATORS

Hawkeye	Mt. Vernon Farmers Exchange
Hawkins Grain Co.	Mueller Grain Co.
High Springs Milling	Myers Grain
Hinton & Company	Northcote Grain
Holland Grain	O'Dell Farmers Co-op Elevator Co.
Houlka Grain & Feed Co.	Papineau Grain Co.
Hudson Grain	Paris & Sons, Inc.
IH Grain	Phillipsburg Cooperative
James Richardson	Potter Co-op
Jewell Grain Co.	Reed Grain
K.S. Crittendon Co.	Reinke Grain
Kanorado	Ritzville Warehouse Co.
Kaytee Products	Roslyn Elevator
Keystone Farm Services, Inc.	Rydal Grain DBA Republic County
Kingfisher Co-op Elevator Assn.	Scandia Grain
L.N. Bowman, Inc.	Shafer Haggart
Lake Preston Co-op	Shawnee
Lake Region Grain Cooperative	Showell Growers
Laverty Elevator	Sinclair Elevator
Lewis Grain	Smoot
Logan County Farm Enterprises	Speltz Elevator, Inc.
Lyman Elevator	Star of the West Milling Co.
Mansfield Grain Exchange, Inc.	Stickle
Mart Grain	Stirum Grain
McGowan Grain	Stockland
Merchants Grain, Inc.	Stratford Grain Company
Midway Co-op	Tonn Grain Co.
Midwest Grain Products	Two States Equity

V. ELEVATORS

C. SMALL COUNTRY ELEVATORS

Underwood Farmers Elevator
United Co-op of Bigelow
W.C. Robertson & Co.
Wallace County Co-op Equity
Walton Elevator Co.
Wells Grain & Peanut Co., Inc.
West Bend Elevator Co.

Western Ag
WG Thompson and Sons
Wheeler Brothers Grain Co., Inc.
Wilmot Equity Elevator
Woodland-Darrow Farmers Co-op
Woodworth Farmers Grain
Yoder Grain

Appendix E

Interviewees

GRAIN COMPANIES INTERVIEWED

Cargill, Inc.
One Central Park Plaza
Omaha, NE 68102
Tel: 402-978-4000

ConAgra, Inc.
15615 McGinty Road West
Minnetonka, MN 55345
Tel: 612-475-6149

The Andersons
1200 Dussel Drive
Maumee, OH 43537
Tel: 419-893-5050

A. G. Processing Grain Company
11717 Burt Plaza, Suite 2
Omaha, NE 68154-1581
Tel: 402-496-7809

J. W. Nutt Company
1333 North Main Street
North Little Rock, AR 72115
Tel: 501-376-0431

Evans Grain Company
1700 East Iron Street
Salina, KS 67402-1520
Tel: 913-827-4484

GRAIN COMPANIES INTERVIEWED

**Avon Grain Company
5550 East Army Post Road
Carlisle, IA. 50047
Tel: 515-266-4215**

**Buckeye Ag-Center, Inc.
10 Railroad Street
Monterey, IN 46960
Tel: 219-542-4077**

**United Purchasers Association
P.O. Box 3838
Des Moines, IA 50322
Tel: 800-342-7005**

RAILROADS INTERVIEWED

**Burlington Northern Railroad
Continental Plaza
777 Main Street
Fort Worth, TX 76102
Tel: 817-878-7415**

**Consolidated Rail Corporation
Glenn Center Plaza
Philadelphia, PA 19103
Tel: 215-851-7881**

**CSX Transportation
500 Water Street
Jacksonville, FL 32202
Tel: 904-366-5810**

**The Atchison, Topeka & Santa Fe Railway
Company
4515 Kansas Avenue
Kansas City, Ks. 66106
Tel: 913-551-4101**

**Illinois Central
233 North Michigan Avenue
Chicago, IL 60601
Tel: 312-819-7874**

**Norfolk Southern Corporation
8 North Jefferson Street
Roanoke, VA 24042
Tel: 703-985-6794**

RAILROADS INTERVIEWED

**Soo Line
Soo Line Building Box-530
Minneapolis, MN 55440
Tel: 612-337-8634**

**Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179
Tel: 402-271-2321**

**Chicago and North Western Transportation
One North Western Center
Chicago, Il. 60606
Tel: 312-559-7000**

**Chicago, Central and Pacific
11128 John Galt Blvd. Suite 555
Omaha, NE 68137
Tel: 602-592-8090**

Appendix F
Shipper Questionnaire

SHIPPER QUESTIONNAIRE

SHIPPER PROFILE

Name and Address of the Company:

Interviewee's Name _____

Company Name _____

Company Address _____

Telephone Number _____

1. What are your major lines of business? (check answer)

Export elevators **Joint ventures with grain cooperatives**

Terminal elevators **Feedmills**

Country elevators **Grain processing**

Barge terminals **Livestock and poultry feeding**

Merchandising **Food products**

Brokerage **Trucking**

Others (specify)

2. Is price the only basis for making mode/carrier selection decisions, or do you also use other criteria? (check answer)

Yes **No**

If "no", what are these other criteria?

CONTRACTING PROFILE

3. Who are the rail carriers with whom you contracted for rail transportation in 1988 and 1989?

4. What differences, if any, do you observe in the contracting philosophy and practices of each of these carriers?

5. How has each of the carriers' philosophies changed, if at all, since the contract disclosure rules for grain went into effect in 1987?

6. Do you observe any reluctance on the part of individual carriers to enter into contracts? If so, please list the carriers.

7. For each of these reluctant carriers, can you explain their reluctance to enter into contracts? (specify railroad name and check where applicable)

Railroad Name: _____

- Limited car supply
- To avoid constraints on price increases
- Reduced margins on contract moves
- Disclosure requirements
- Lack of competition
- Other (specify)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

8. What impact has contracting had on your:
- a) Cost of transportation? Has it resulted in lower or higher prices for rail transportation?
 - b) Car supply?
 - c) Your willingness to move freight by rail?
 - d) Other impacts? (specify)

9. On an average, how much have the rail contracts been lower than published tariff rates during the 1985 through 1989 period, by year?

<u>Year</u>	<u>Cents per Bushel Below Tariff Rates</u>	<u>Percent below Tariff Rate</u>
1985	___ ¢	___ %
1986	___ ¢	___ %
1987	___ ¢	___ %
1988	___ ¢	___ %
1989	___ ¢	___ %

10. Do you also get refunds on grain movements handled under contract by rail?

___ Yes ___ No

11. If the answer to the previous question is yes, what was the percentage of refunds received by your company relative to your total rail transportation bill for each of the past five years?

<u>Year</u>	<u>Cents per Bushel Below Tariff Rates</u>	<u>Percent below Tariff Rate</u>
1985	___ ¢	___ %
1986	___ ¢	___ %
1987	___ ¢	___ %
1988	___ ¢	___ %
1989	___ ¢	___ %

12. For 1989, what would you estimate was the percentage of refunds relative to:

Tariff rates ___ %
 Contract rates ___ %

13. How does the refund mechanism work for each rail carrier? (specify railroad name)

Railroad Name: _____

● **Basis of refund calculation (check where applicable)**

-- **Signing up bonus** _____

-- **Refunds tied to meeting volume commitment** _____

● **Minimum volume required for refund to apply (number of tons)** _____

● **Method of payment (check where applicable)**

-- **Paid quarterly** _____

-- **Paid at conclusion of contract** _____

-- **Shipper computes and files for refund** _____

-- **Carrier automatically pays refund** _____

● **Time for payment (number of days)**

-- **Average time from actual movement to filing for refund** _____

-- **Average time from filing of refund to receipt of refund** _____

● **Other issues (specify)**

14. How do you find out about what is included in your competitors' rail transportation contracts? (check appropriate answer)

- Grain contract summaries filed with the ICC _____
- Competitors' bids _____
- Discussions with competitors _____
- Other (specify) _____

15. Have railroads been able to use contracting to bring about:

- Railroad operating efficiencies?

___ Yes ___ No

Explain:

- Concentrated traffic or fewer rail lines?

___ Yes ___ No

Explain:

- Other changes, if any, to reduce rail costs?

___ Yes ___ No

Specify and explain:

16. What railroads have performed best in terms of using contracting to improve the following? (specify railroad name and check where applicable)

Railroad Name:

- | | | |
|-----------------------|-------|-------|
| ● Railroad operations | _____ | _____ |
| ● Reduce costs | _____ | _____ |
| ● Increase volume | _____ | _____ |
| ● Improve margins | _____ | _____ |
| ● Other (specify) | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

17. What railroads have performed worst in terms of using contracting to improve the following? (specify railroad name and check where applicable)

Railroad Name:

- Railroad operations _____
- Reduce costs _____
- Increase volume _____
- Improve margins _____
- Other (specify)

18. What is the percentage of carloads of grain handled by rail in 1989, by which your company contracted as:

- Shipper only _____ %
- Receiver only _____ %
- Both shipper and receiver _____ %
- Broker _____ %
- Other (specify):
 _____ %
 _____ %

19. Has the relationship indicated in Question 18 changed over the past five years (1985 through 1989)?

___ **Yes** ___ **No**

If "yes", please explain:

20. What percentage of the rail grain contracts that you sign are for?

Less than 30 days	%
31 to 90 days	%
91 to 180 days	%
181 to 365 days	%
More than 1 year	%

21. What commitments do you prefer to include in a grain contract? (check appropriate box)

SHIPPER COMMITMENTS:	
Use of private equipment	
Minimum annual volume	
Other commitments (specify):	
CARRIER COMMITMENTS:	
Discount rates below published tariffs	
Refunds	
Guaranteed car supply	
Multiple car discounts	
Unit train discounts	
Protection against price increases	
Other (specify):	

22. What is the percentage of your grain contracts for rail transportation that are renewed?

23. Do the contracts for rail transportation of export grain differ from those for rail transportation of domestic grain?

Yes **No**

If "yes", what are the differences?

24. What changes have you perceived in the railroads' willingness to be competitive in the grain transportation business:

a) Since passage of the Staggers Act (October 1980)?

b) Since changes in the disclosure rules (January 1987)?

25. Does increased volume give you sufficient leverage to negotiate desired railroad contract terms with favorable results? Explain.

26. Is there any relationship between the volume you ship and the terms of the contract with a rail carrier?

27. For movements by rail, how many annual carloads do you have to guarantee a carrier before you can get a contract rate that will give you an advantage over your competitors?

28. Does access to more than one carrier facilitate your ability to get:

a) Contracts? Yes No

Explain:

b) Lower rates? Yes No

Explain:

29. Has railroad contracting had any impact on railroad service to shippers?

Yes No

Explain:

- 30. Have you requested informally of a carrier that you be granted the same terms as those contained in a contract with another shipper? If so, what was the outcome?**
- 31. Have you requested formally, through the ICC's formal process, that you be granted the same terms as those contained in a contract with another shipper? If so, what was the outcome?**
- 32. What do you see as the future role of contracts in the transportation of agricultural commodities by rail?**

DISCLOSURE PROCESS

- 33. What is your perception of how the ICC disclosure process works?**
- 34. Who do you think are the principal beneficiaries of the disclosure process?**

35. How have they benefited?

36. Who has the disclosure process disadvantaged?

37. How have they been disadvantaged?

38. Has the disclosure process had any impact on how grain is marketed?

Yes No

Explain:

39. Has the disclosure process had any impact on how grain is transported?

Yes No

Explain:

40. How has the disclosure process influenced your decisions to transport grain by rail?

41. In your opinion, how has the disclosure process influenced specific carrier contracting behavior?

42. Did you support increased disclosure at the time it was being proposed in Congress? Do you now support it?

IMPACT OF CHANGES IN CONTRACT DISCLOSURE RULES

43. In January 1987, the ICC revised the disclosure rules to increase the first-tier disclosure for agricultural commodity rail contracts.

a) What benefits do you see from this increased disclosure?

b) What disadvantages do you see from this increased disclosure?

44. What impact have the additional disclosure requirements which were mandated in 1987 had on:

a) The railroads' willingness to enter into contracts? Explain:

b) Your willingness to enter into contracts? Explain:

c) The number of contracts? The volume of traffic moving under contract? Explain:

d) The rate structure? Explain:

e) The availability of covered hopper cars? Explain:

f) The nature of the contracts (origin vs. destination contracts)? Explain:

g) The terms and conditions included in the contracts? Explain:

h) The duration of the contracts? Explain:

i) The cost of transportation? Has it resulted in lower or higher prices for rail transportation? Explain:

j) The size of contract, in terms of the minimum number of cars required? Explain:

k) Your willingness to move freight by rail? Explain:

45. Have the rail contract disclosure requirements imposed any additional costs -- direct or indirect -- on you?

46. An analysis of the ICC's contract data base indicates that, after increasing rapidly from 1984 to 1987, the number of grain contracts signed by the railroads levelled off -- starting at or about the first quarter of 1987, when the new disclosure rules went into effect. Can you explain this trend?

47. It appears that the peak months for commencing rail grain contracts in recent years have been February and July. What is the reason for this? Explain:

48. Do you believe the current first-tier disclosure rules are: (select one)

a. Too extensive, and should be reduced

b. Adequate

c. Insufficient, and need to be expanded

Explain:

49. Which of the following items of information that are now included in the contract summary (first-tier disclosure) for agricultural commodities do you think should be retained, which should be eliminated, which should be changed, and what are your reasons for your point of view:

	<u>Ret</u>	<u>Elim</u>	<u>Chg</u>	<u>Reason</u>
a. Specific commodity	_____	_____	_____	_____
b. Shipper identity	_____	_____	_____	_____
c. Specific:				
Origins	_____	_____	_____	_____
Destinations	_____	_____	_____	_____
Transit points	_____	_____	_____	_____
Shipper facilities	_____	_____	_____	_____
d. Duration of contract	_____	_____	_____	_____
e. Provisions for optimal extension	_____	_____	_____	_____
f. Rail car data	_____	_____	_____	_____
g. Limitations on cars that can be dedicated to contracts:				
40% of total cars, by car type, owned or leased, by carrier	_____	_____	_____	_____
40% of carrier-owned or -leased cars used on an average over past 3 years, by a large shipper	_____	_____	_____	_____

h. Volume:

Minimum and actual volume _____

Volume break points _____

Movement type _____

i. Base rates and charges _____

j. Escalation provisions _____

k. Special features:

Credit terms _____

Transit time commitment _____

Discounts _____

Switching _____

Guaranteed minimum % _____

Other: _____

50. The contract disclosure rules allow transportation service to commence prior to filing or approval of the contract. Do you agree with this ruling?

____ **Yes**

____ **No**

Explain:

51. The second-tier disclosure rules require that a petitioner, in order to discover contract provisions, must show that he (i) has standing to file a complaint; and (ii) will be affected by the contract. Is this requirement: (select one)

- a. Too onerous
- b. Adequate
- c. Too liberal

Explain:

52. Other than those indicated in responses to earlier questions, what changes would you like to see in the grain contract disclosure requirements?

TRANSPORTATION PROFILE

53. Which of the following grain transportation assets do you own?

- Barges Trucks
- Rail cars
- Others (specify)

How many of these units did you own as of 12/31/89?

Type	Units
_____	_____
_____	_____
_____	_____
_____	_____

54. How do you determine annual rail transportation requirements in sufficient time to negotiate rail contracts?

55. What was the total tonnage moved by your company by rail in 1989, and what was the proportion of this handled under contract?

COMMODITY	ANNUAL TONNAGE	% UNDER CONTRACT
Corn		
Wheat		
Soybean		
Sorghum		
Barley		
Oats		
Other Grains:		
TOTAL GRAIN		

56. Approximately what proportion (%) of your total transportation for 1989 was handled by rail? rail/barge? truck? truck/barge?

	RAIL	RAIL/BARGE	TRUCK	TRUCK/BARGE
Corn				
Wheat				
Soybean				
Sorghum				
Barley				
Oats				
Other Grains:				
TOTAL GRAIN				

57. Was the percentage moving under rail contract the same for domestic and for export-bound grain?

___ **Yes**

___ **No**

If the answer is no, then please indicate the percentages of grain moving under contract in 1989, separately for domestic and export movements.

COMMODITY	% UNDER CONTRACT	
	DOMESTIC	EXPORT
Corn		
Wheat		
Soybean		
Sorghum		
Barley		
Oats		
Other Grains:		
TOTAL GRAIN		

Appendix G
Carrier Questionnaire

CARRIER QUESTIONNAIRE

CARRIER PROFILE

Name and Address of the Company:

Interviewee's Name

Company Name

Company Address

Telephone Number

STRATEGY PROFILE

1. Describe your current grain marketing strategy:

2. How long has the current strategy been in effect? Explain:

3. Explain how that strategy is specifically tailored to individual grain markets (export/domestic/wheat/corn/oats,etc.):

4. What percent of total grain tonnage moves under contract? Does this percentage vary by type of grain? For the domestic and export markets? Explain:

5. How successful has your grain marketing strategy been?

6. Have grain volumes moving under contract increased or decreased over the last five years?

7. Describe any fundamental changes or shifts which have taken place in your grain marketing strategy during the past five years:

8. What is unique about your grain marketing strategy? How does it differ from the strategy of other competing roads?

9. What, if any effect, has your commercial strategy had on underlying grain markets in your region?

10. What has been the relationship between rail rate levels and grain market prices in your service territory for the past five years? How successful have you been in capturing grain market price increases?

In adjusting to grain market decreases?

11. What external factors have significantly influenced new grain volume over the past five years? Explain:

CONTRACT POLICY

12. What are the typical terms and conditions in one of your grain contracts?

13. Has the nature of the service contracts that you write changed materially over the past nine years?

Origin versus destination emphasis?

Larger versus smaller shipper emphasis?

14. With regard to the current marketing strategy:

Who is the target customer for contract grain services?

Do you write contracts with other grain market participants other than target customers?

15. What market objectives are being pursued through contracting?

16. What competitive factors have shaped your contract strategy?

Explain:

17. What operating and efficiency improvement objectives have you pursued through contracting?

18. How have you used contracts to concentrate grain volumes on high density lines?

To increase the use of unit train and/or multiple car operations?

19. On an average, how much have the rail contracts been lower than published tariff rates during the 1985 through 1989 period, by year?

<u>Year</u>	<u>Cents per Bushel Below Tariff Rates</u>	<u>Percent below Tariff Rate</u>
1985	___ ¢	___ %
1986	___ ¢	___ %
1987	___ ¢	___ %
1988	___ ¢	___ %
1989	___ ¢	___ %

20. Do you also grant refunds on grain movements handled under contract by rail?

___ Yes ___ No

21. For 1989, what would you estimate was the percentage of refunds relative to:

Tariff rates ___ %

Contract rates ___ %

22. How does the refund mechanism work?

- Basis of refund calculation (check where applicable)

-- Signing up bonus _____

-- Refunds tied to meeting volume commitment _____

- Minimum volume required for refund to apply (number of tons) _____

● **Method of payment (check where applicable)**

-- **Paid quarterly**

-- **Paid at conclusion of contract**

-- **Shipper computes and files for refund**

-- **Carrier automatically pays refund**

● **Time for payment (number of days)**

-- **Average time from actual movement to filing for refund**

-- **Average time from filing of refund to receipt of refund**

● **Other issues (specify)**

23. What classes or segments of the market require distinct and individualized contract treatment?

Have grain and rail contract prices generally moved up and down together? Or have contract rates offered shippers a hedge against rail rate increases?

24. What types of contract guarantees and commitments are you prepared to make?

25. What types of contract guarantees and commitments, requested by your shippers, are you unwilling to make?

26. Have any shippers requested, informally or through the ICC's formal process, that they be granted the same terms as those contained in a contract with another shipper? If so, what was the outcome?

27. What is the percentage of your grain contracts for rail transportation that are renewed?

28. Do the contracts for rail transportation of export grain differ from those for rail transportation of domestic grain?

Yes No

If "yes", what are the differences?

29. Is there any relationship between the volume shipped by a shipper and the terms of the contract?

DISCLOSURE RULES

30. What effects have contract disclosure requirements had on your contracting practice?

On the willingness of shippers and/or receivers to enter into contracts?

31. Have disclosure rules discouraged you from entering into contracts? If so, why?

32. Has the disclosure process had any impact on how grain is marketed? transported? If yes, explain:

33. Do you monitor contract summaries on a regular basis in order to stay on top of your competition?

34. Do you find the contract summary data helpful?

35. What costs have resulted from compliance with Commission-mandated disclosure requirements?

36. What benefits have resulted from compliance with Commission-mandated disclosure requirements?

37. Have disclosure rules had any impact on covered hopper car demand/supply balances?

38. Did you support increased disclosure at the time it was being proposed in Congress? Do you now support it?

39. Would your commercial strategy be different without disclosure rules? If so, in what ways?

IMPACT OF CHANGES IN CONTRACT DISCLOSURE RULES

40. In January 1987, the ICC revised the disclosure rules to increase the first-tier disclosure for agricultural commodity rail contracts.

a) What benefits do you see from this increased disclosure?

b) What disadvantages do you see from this increased disclosure?

41. What impact have the additional disclosure requirements which were mandated in 1987 had on:

a) Shippers' willingness to enter into contracts? Explain:

b) Your willingness to enter into contracts? Explain:

c) The number of contracts? The volume of traffic moving under contract? Explain:

d) The rate structure? Explain:

e) The availability of covered hopper cars? Explain:

f) The nature of the contracts (origin vs. destination contracts)? Explain:

- g) The terms and conditions included in the contracts? Explain:**
- h) The duration of the contracts? Explain:**
- i) The cost of transportation? Has it resulted in lower or higher prices for rail transportation? Explain:**
- j) The size of contract, in terms of the minimum number of cars required? Explain:**
- k) Your willingness to move freight by rail? Explain:**

42. What changes would you like to see in the grain contract disclosure requirements?

43. An analysis of the ICC's contract data base indicates that, after increasing rapidly from 1984 to 1987, the number of grain contracts signed by the railroads levelled off -- starting at or about the first quarter of 1987, when the new disclosure rules went into effect. Can you explain this trend?

44. Do you believe the current first-tier disclosure rules are: (select one)

- a. Too extensive, and should be reduced**
- b. Adequate**
- c. Insufficient, and need to be expanded**

Explain:

45. It appears that the peak months for commencing rail grain contracts in recent years have been February and July. What is the reason for this? Explain:

46. Which of the following items of information that are now included in the contract summary (first-tier disclosure) for agricultural commodities do you think should be retained, which should be eliminated, which should be changed, and what are your reasons for your point of view:

	<u>Ret</u>	<u>Elim</u>	<u>Chg</u>	<u>Reason</u>
a. Specific commodity	___	___	___	_____
b. Shipper identity	___	___	___	_____
c. Specific:				
Origins	___	___	___	_____
Destinations	___	___	___	_____
Transit points	___	___	___	_____
Shipper facilities	___	___	___	_____
d. Duration of contract	___	___	___	_____
e. Provisions for optimal extension	___	___	___	_____
f. Rail car data	___	___	___	_____
g. Limitations on cars that can be dedicated to contracts:				
40% of total cars, by car type, owned or leased, by carrier	___	___	___	_____
40% of carrier-owned or -leased cars used on an average over past 3 years, by a large shipper	___	___	___	_____

h. Volume:

Minimum and actual volume

Volume break points

Movement type

i. Base rates and charges

j. Escalation provisions

k. Special features:

Credit terms

Transit time commitment

Discounts

Switching

Guaranteed minimum %

Other:

47. The contract disclosure rules allow transportation service to commence prior to filing or approval of the contract. Do you agree with this ruling?

Yes No

Explain:

48. The second-tier disclosure rules require that a petitioner, in order to discover contract provisions, must show that he (i) has standing to file a complaint; and (ii) will be affected by the contract. Is this requirement: (select one)

a. Too onerous

b. Adequate

c. Too liberal

Explain:

CAR SUPPLY

49. What impact, if any have equipment shortages in 1988/1989 had on contracting practices?

50. The Staggers Act restricts the commitment of more than 40% of available equipment to contract use. How have you dealt commercially with this provision of the Act?

51. On what basis does your railroad allocate car supply between contract holders and non-contract holders? Explain:

FUTURE TRENDS

52. What do shippers require in contracts today that they did not require in 1987 and prior years?

53. What new features are beginning to emerge in grain contracts?

54. What changes do you envision in your commercial strategy during the next five years?

In buyer/seller relations in the grain transportation market?

55. What does the future hold for grain contracting?

Do you expect an increased or decreased volume of grain moved under contract?

APPENDIX H

**COMMERCIAL STRATEGY DEVELOPMENT
OF SPECIFIC CARRIERS**

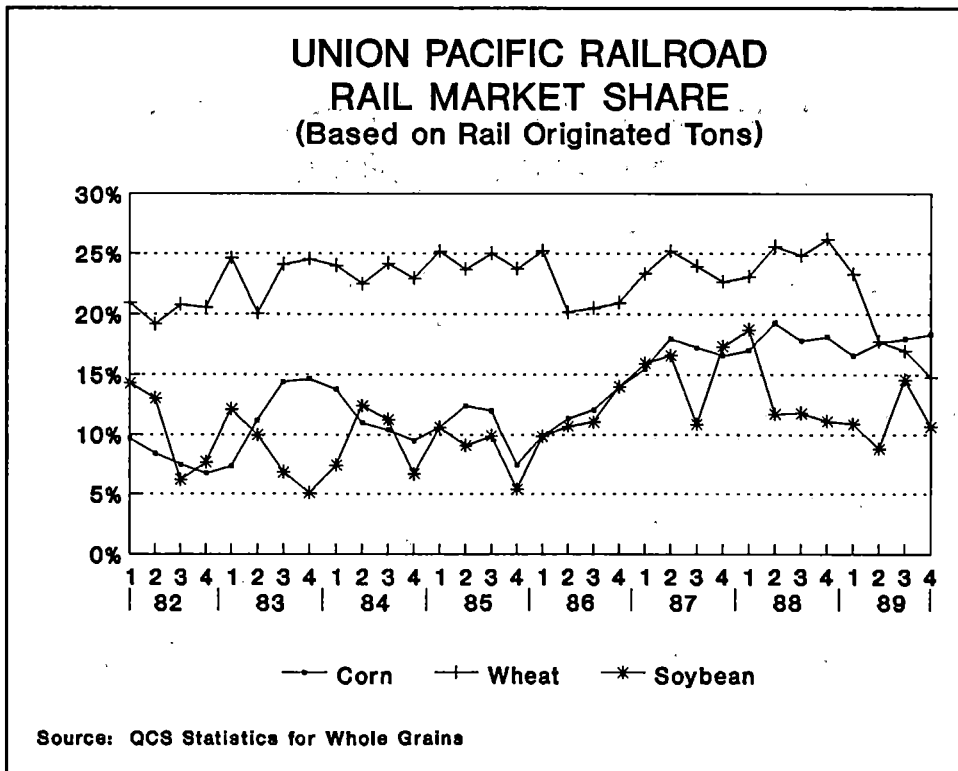
H.1 UNION PACIFIC RAILROAD COMMERCIAL STRATEGY

The Union Pacific (UP) is a large grain originating railroad, second only to the Burlington Northern. In the 1980's, its share of the corn and soybeans markets increased notably (Figure H.1). However, in 1988/1989 its share of both the originated wheat and soybeans markets declined. The Union Pacific accounts for approximately 18% of the originated wheat in the U.S., 17% of the originated corn, and 11% of the originated soybeans.

H.1.1 BASELINE MARKET STRATEGY

The UP serves major grain-growing regions in the high plains, including a particularly large number of elevators in Kansas, Nebraska, and Texas. Like the BN, the Union Pacific provides single line access to both Gulf Coast and to Pacific Northwest ports. In addition, it serves local elevators, numerous grain

Figure H.1



processing plants, and feed lots throughout the plains states. Union Pacific's principal competitors in its market territory are the Santa Fe and the Burlington Northern Railroads, and to some extent, other regional grain-gathering railroads.

Approximately 60% of Union Pacific's grain tonnage moves under contract. This percentage varies by type of grain and by type of market (export, domestic). The single factor that has most significantly influenced new grain volume on the Union Pacific over the past five years is the growth of domestic chicken feed lots, most notably in the Southeast in Arkansas and in California.

Union Pacific's marketing strategy is to respond to the demands of individual shippers by designing tailored service packages. This strategy has evolved over the years as the business has matured.

H.1.2 CHANGES IN MARKETING PRACTICES SINCE THE STAGGERS ACT

Like other grain railroads, the initial marketing thrust on the Union Pacific immediately following the passage of the Staggers Act was to lock-in shipper commitments with grain contracts. Contracting activity has dropped off since 1986, after growing rapidly up to that point. The subsequent decline in grain contracting activity occurred as both the railroad and its shippers gained more experience with the contract negotiating process. The carrier increasingly, believes that market share gains available through contracting are minimal. Also, the carrier feels that the administrative burden of complying with Congressionally mandated disclosure requirements, particularly that associated with filing contract summaries, is significant. As a result, the Union Pacific has gradually begun to shift towards moving a greater proportion of its grain traffic under filed tariffs. Toward that end, it has streamlined its tariffs to make them more like "standard" contracts.

H.1.3 CURRENT CONTRACTING POLICY

Union Pacific's basic strategy has been to cater to the specific demands of its shippers and to tailor contracts to unique shipper requirements. The Union Pacific contracts frequently contain provisions concerning guaranteed

rate levels for the term of the contract, minimum volumes, and/or percent of total volume shipped via the Union Pacific (Figure H.3). Union Pacific also allows discounts below published tariff levels to induce the use of efficient unit train movements or multiple car operations.

The Union Pacific contracts both with shippers and receivers (Figure H.3). As a matter of policy, it attempts to treat all customers in similar market circumstances equally and its contract terms minimize the effects of volume leverage. However, the Union Pacific does reward shipping behavior with discounts that translate into productivity gains on the part of the railroad. Union Pacific contracts tend to be renewed or renegotiated when they come to the end of their term and much of Union Pacific's marketing effort is involved in maintaining competitive and equitable terms in already established commercial relationships.

The Union Pacific does not use contracts to commit equipment to particular shippers. Moreover, no fundamental difference exists between Union Pacific contracts entered into for the transportation of export grain and those for domestic shippers. Both domestic and export contracts typically reference published rates as a basis for contract prices.

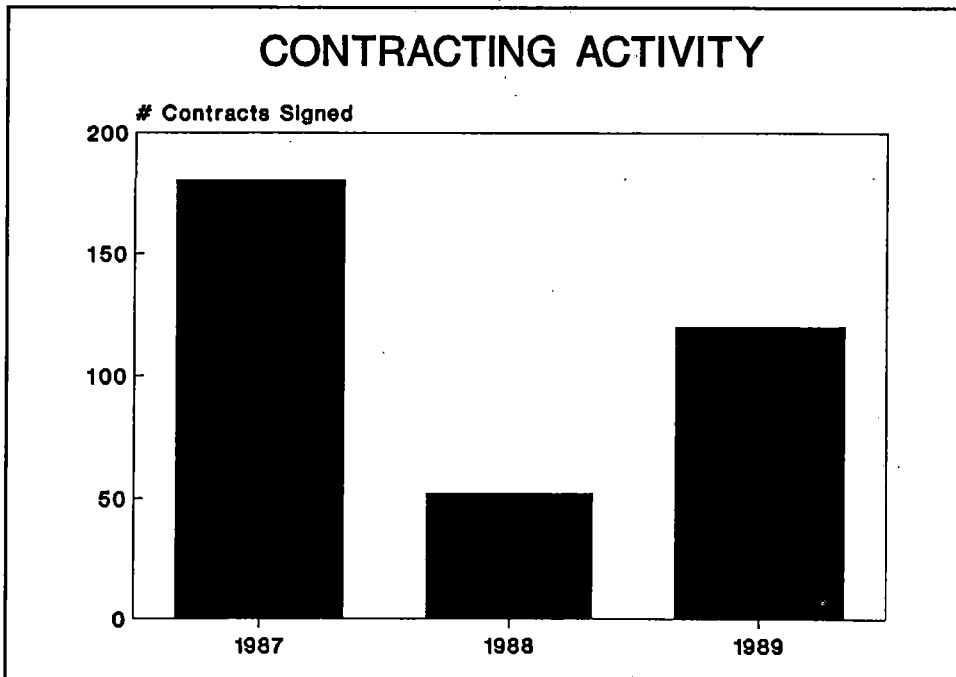
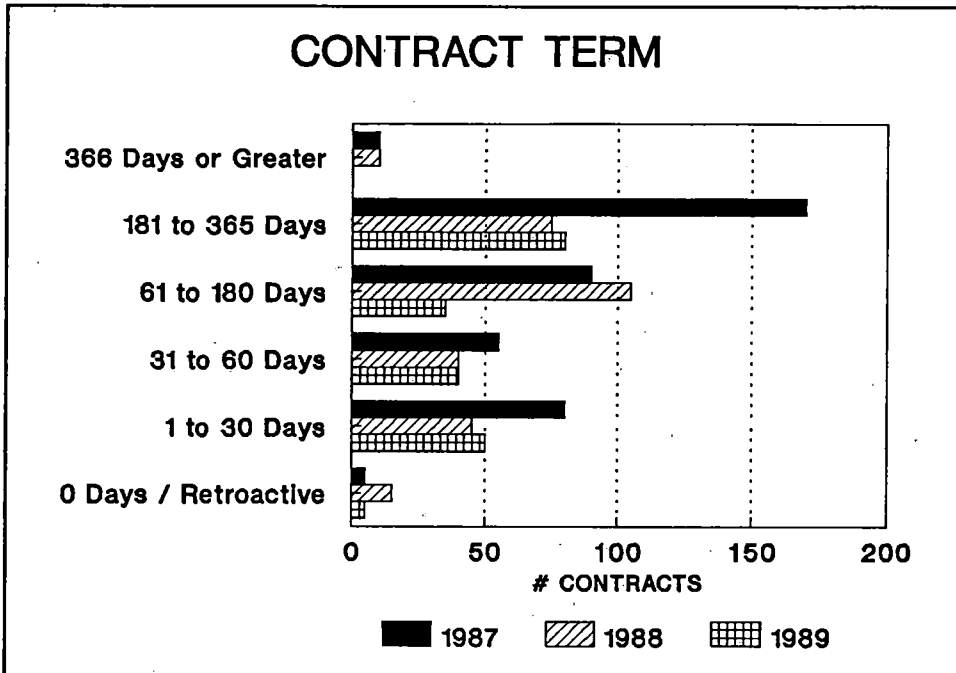
H.1.4 FUTURE TRENDS

The most significant trend on the Union Pacific is a shift away from tailored contracts to customer-designed tariff publications as the basis for codifying customer service agreements.

H.1.5 UNION PACIFIC ON CONTRACT DISCLOSURE

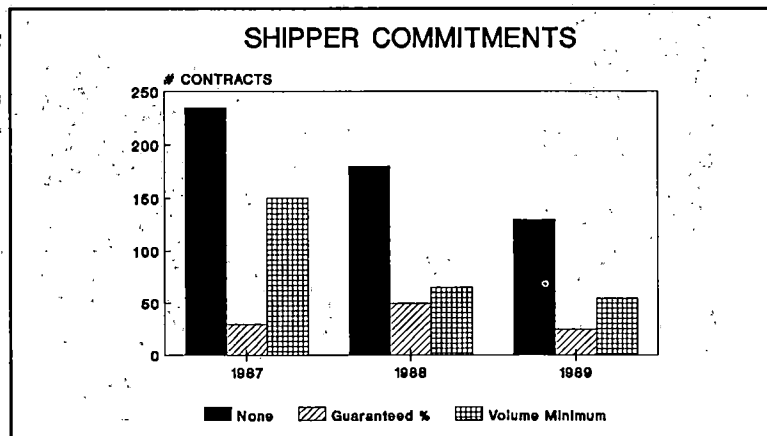
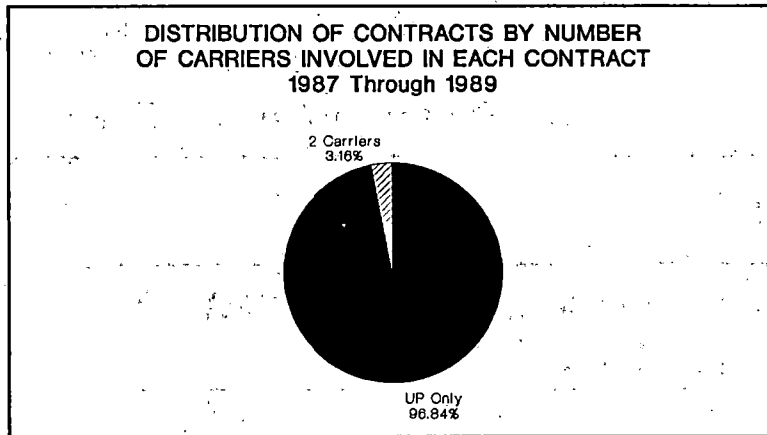
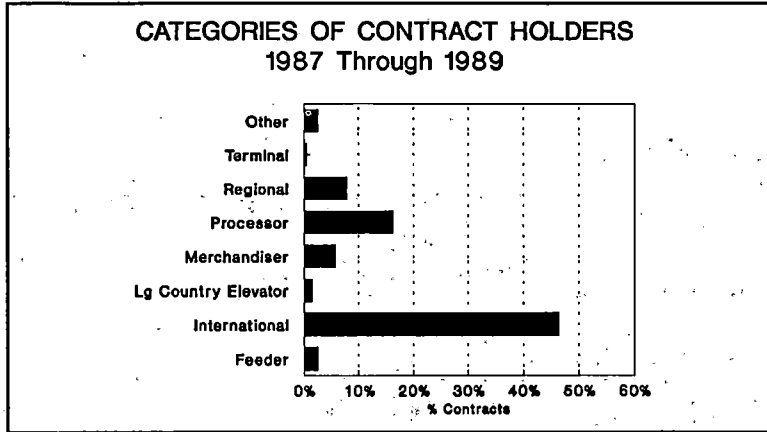
Effects of Disclosure. The Union Pacific Railroad believes that contract disclosure has had little impact on its contracting practices. Moreover, it has detected little impact on the willingness of shippers and/or receivers to enter into contracts, as a result of contract disclosure. Although the railroad monitors contract summaries at the ICC, the carrier indicated that it probably receives more market information by word of mouth from its customers than from this contract monitoring process. However, the railroad indicated that a

Figure H.2
UNION PACIFIC RAILROAD



Source: ICC Grain Contract Summaries

Figure H.3
UNION PACIFIC RAILROAD



Source: ICC Grain Contract Summaries, 1987 to 1989

considerable amount of administrative effort is "wasted" in complying with congressionally mandated disclosure requirements. In particular, the carrier pointed out that the administrative burden of filing summaries is quite significant. This was one of the factors that has led Union Pacific to increasingly use tariffs and to decrease the use of contracts, though it does not expect contracts to disappear even over the long run.

Notwithstanding the fact that Union Pacific is increasingly moving to tariffs, the position of the railroad is that increased disclosure has had virtually no impact either on shippers, the rail contracting procedure itself, or on the carrier's strategy. Moreover, the railroad sees no particular benefit to either large or small shippers or the railroads resulting from increased disclosure. It would, in fact, like to see less disclosure. It feels that the current first-tier disclosure rules are too extensive and administratively burdensome and should be reduced.

However, UP believes that disclosure has played a role, perhaps a marginal one, in inhibiting the commercial initiative of both carriers and shippers. In general, Union Pacific feels that there is no essential rationale for contract disclosure as it is currently practiced.

Changes in Disclosure Requirements. Its position of opposition does not mean that the Union Pacific believes that current contract disclosure rules cannot be improved. In general, it would like to see many of the specific information requirements in the disclosure rules modified. For example, the Union Pacific would like requirements regarding optional contract extension, volume breakpoints, base rates, charges, and escalation provisions to be eliminated, as well as disclosure requirements regarding special features, including credit terms, transit time commitment, discount and switching provisions.

H.2 ATSF COMMERCIAL STRATEGY DEVELOPMENT

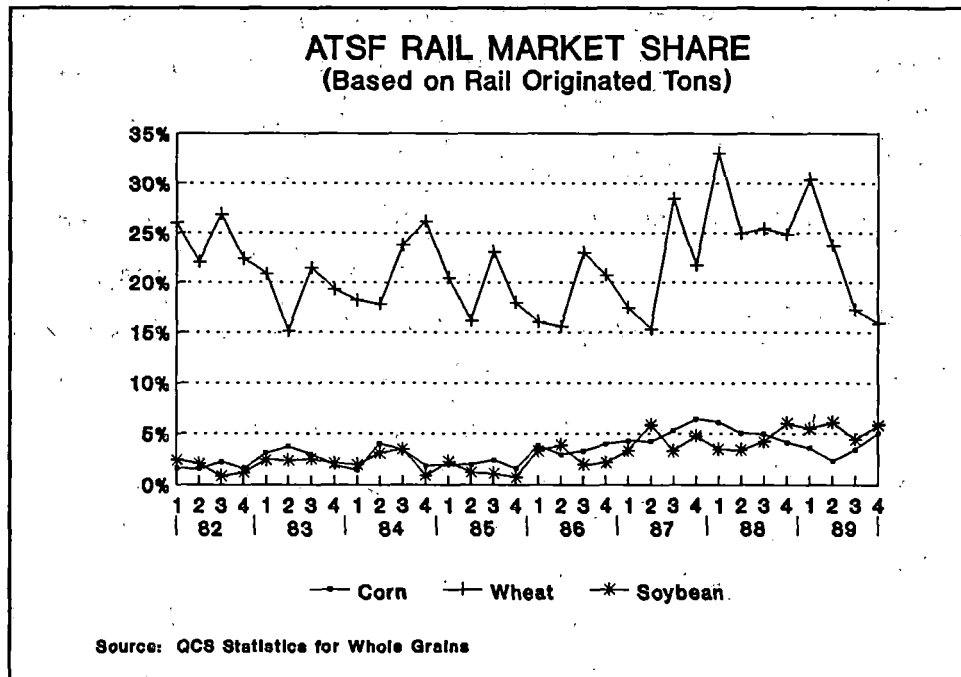
During the 1980's, ATSF's share of the wheat market has hovered around 21%, with the notable exception of 1988 when the carrier's market share soared to 27%. Its shares of the corn and soybeans markets have

increased from low bases to 4% and 5% respectively. Figure H.4 shows the carrier's market share performance during the 1980's.

H.2.1 BASELINE MARKET STRATEGY

The ATSF serves one major grain export corridor, the Great Plains states to the Gulf Coast. In addition, it serves a number of local grain processing plants and feed lots. The ATSF is the leading carrier of hard winter wheat in Kansas, Oklahoma, Texas, Colorado, and New Mexico. It also carries a significant volume of milo, soybeans, and sunflower seeds, and handles a large volume of corn to local feeder markets in California, Texas, and New Mexico. Shipments of feed grains and wheat to Mexico are becoming increasingly important. Since its reorganization in August 1989, the ATSF grain marketing

Figure H.4



group has endeavored to develop distinct marketing programs for each of the domestic markets it serves.

ATSF's objectives in pursuing its current grain marketing program are

threefold: 1) to increase the profitability of its grain traffic; 2) to maintain its market share in export markets; and 3) to develop new (niche) domestic markets.

ATSF grain marketers confront several unique competitive circumstances. The ATSF competes for Plains states originated grain with two major railroads -- the BN and the UP -- both of whom offer services via both the Gulf and the Pacific Northwest. In niche domestic markets, the ATSF faces stiff competition from other modes and from alternative sources of grain supply.

H.2.2 CHANGES IN MARKETING PRACTICE SINCE THE STAGGERS ACT

Initially after the passage of the Staggers Act, the ATSF shifted its marketing emphasis strongly toward price discounted-contracts, in order to maintain its market share. More recently, and particularly since August 1989, it has shifted its commercial strategy again from principally a contract to a tariff format. This shift in emphasis is designed to achieve several objectives, including the following: 1) to allow underlying commodity markets to stabilize without perturbations in transportation cost; and 2) to improve the revenue yield of ATSF-originated grain, since tariff rates are typically higher than contract rates. Since transportation costs represent a significant portion of the delivered price of whole grains within the ATSF market, small percentage changes in transportation charges and/or preferred terms contained in confidential contracts can cause significant "perturbations" in underlying grain markets.

H.2.3 CURRENT CONTRACTING POLICY

The ATSF uses contracts to capitalize on unique market opportunities that cannot be pursued through tariffs. ATSF attempts to apply its grain contracting policies consistently and equally within market segments. ATSF contracts with both domestic and international shippers. Market relationships are more complex in international markets and it believes that these market relationships need more careful handling through confidential contracts.

Overall, the percent of grain moving under contract on ATSF varies between 15% and 25% of total grain handled. This represents a substantial reduction from levels that prevailed in the period immediately following the Staggers Act. At the same time, ATSF contracts have become shorter in term (Figure H.5), simpler to interpret and enforce, and more standardized in their format. A typical ATSF grain contract includes the following provisions: either 1 a) a price for services set for a fixed term; or 1 b) a contract price that is typically pegged as a percent of a published tariff; in both cases 2) the shipper typically commits a percent of his total grain shipment; and 3) escalation provisions are specified for longer term contracts.

The ATSF contracts both with shippers and receivers (Figure H-6). As a matter of policy, it does not favor, with preferred contract terms, large customers over small customers. Rather it treats all customers within specific market segments equally. Although early ATSF contracts were designed to encourage efficient sixty car tenders, incentives to induce unit train tenders have since been included in ATSF tariffs, and the objective of inducing efficient operations through contracting has receded in strategic importance. Most grain moving via major export corridors currently moves via tariff application.

The ATSF's principal use of contracts currently is to compete for increased market share in specific geographical markets, where source and intermodal competition call for aggressive pricing. The ATSF also uses contracts to extend its service capabilities beyond its local rail network, both via multi-modal services (e.g., bulk transfer, truck rail distribution, rail/barge) and via inter-line movement (e.g., the St. Louis gateway haulage agreement with GWNR).

H.2.4 FUTURE TRENDS

The essential issue in grain merchandising remains the ability of grain buyers and sellers to hedge market risks. ATSF believes that grain contracts, at least in their current manifestation, have not effectively addressed this area of shipper need. Indeed, confidential contracts whose terms vary from shipper to shipper may actually increase market risk.

Figure H.5
ATCHISON, TOPEKA AND SANTA FE RAILWAY

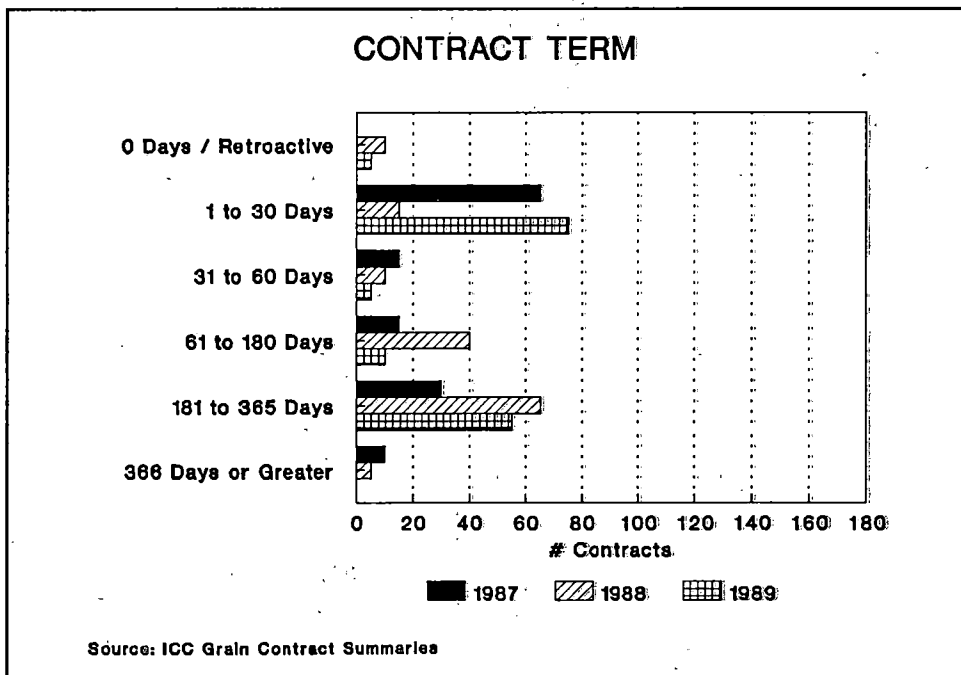
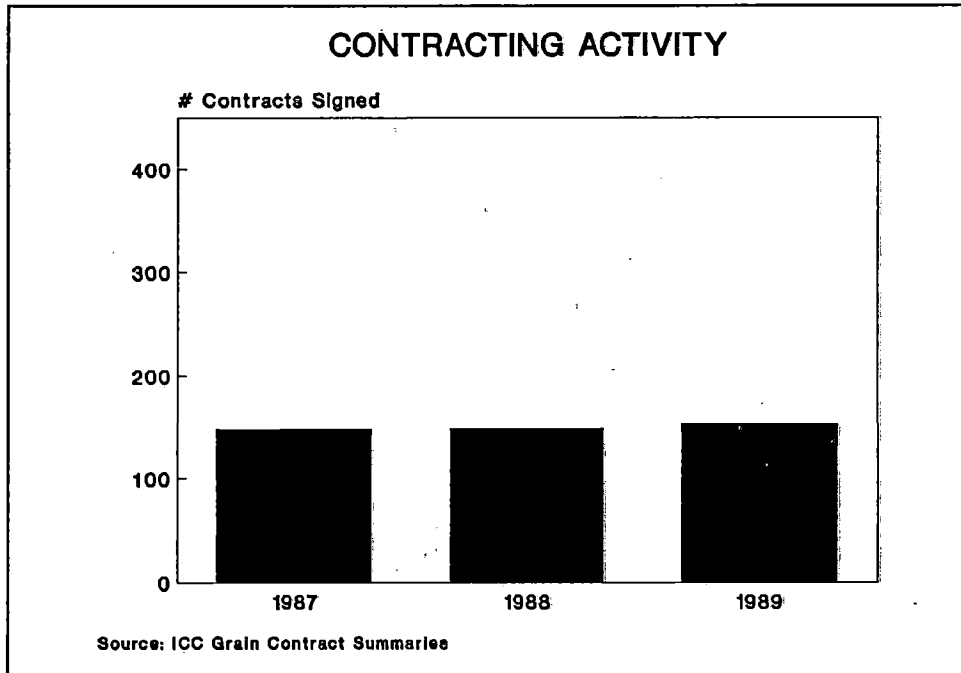
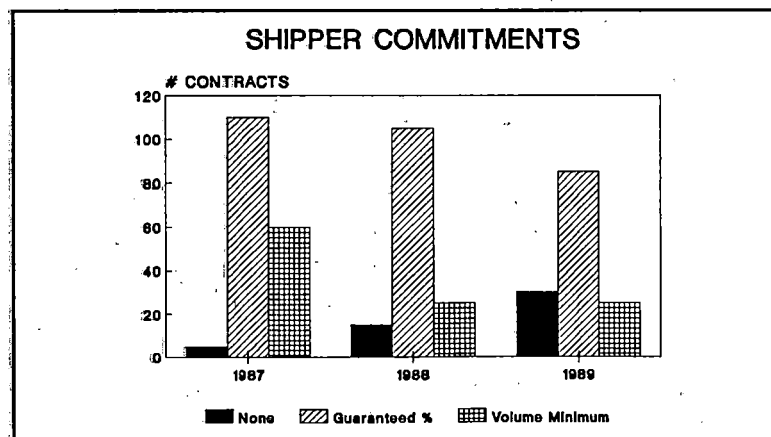
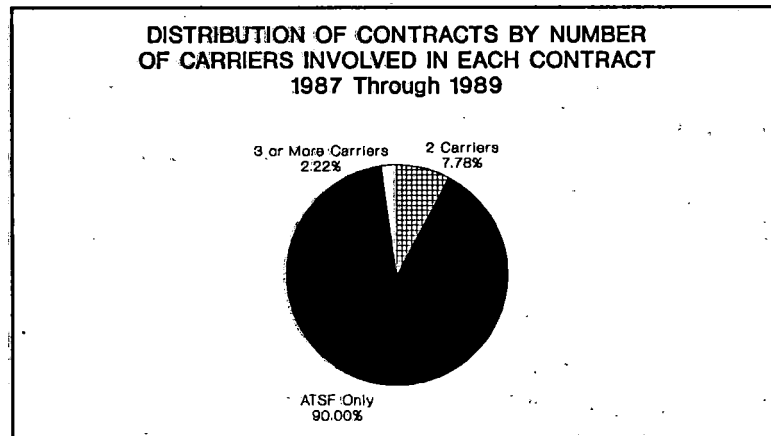
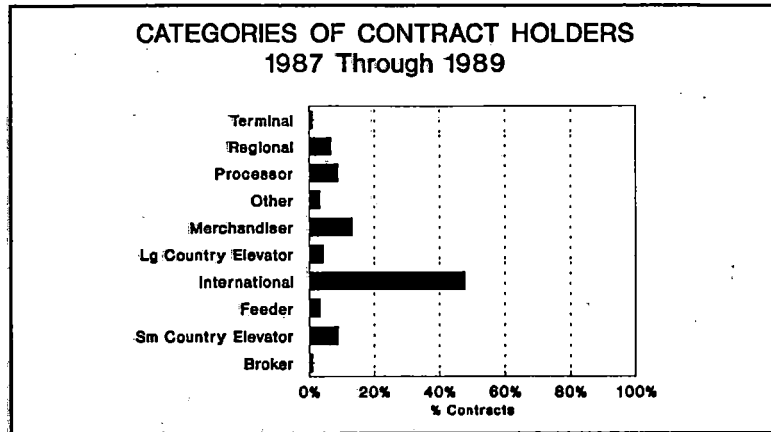


Figure H.6
ATCHISON, TOPEKA AND SANTA FE RAILWAY



Source: ICC Grain Contract Summaries, 1987 to 1989

The number of contracts on ATSF is expected to continue to decrease. However, these fewer contracts will be of longer term (rather than shorter term, as in the past) and will have more strategic significance. They will codify significant partnership relationships between carriers and shippers rather than short term market gains that, in many cases, cannot be competitively sustained either by the carrier or the shipper. Market stability, a shared basis on which to build long term plans and common objectives to move U.S. grains into new global markets, will serve as the foundation principles for future "partnership" contracts.

H.2.5 ATSF ON CONTRACT DISCLOSURE

Effects of Disclosure. No ATSF customer has requested, either informally or formally through ICC intervention, that they be granted identical terms to those contained in a contract with a competing shipper. Although commercial strategy of the ATSF would probably not have evolved differently in the absence of disclosure, the threat remains that disclosure may be used to force the revelation of information the carrier would prefer to keep confidential. The carrier believes that in specific instances the threat of disclosure has also inhibited contracting innovation and experimentation. In the words of one ATSF manager: "In some cases, disclosure rules keep contracting from being worth the trouble!"

ATSF believes that disclosure, primary or secondary, has resulted in no benefit either to shippers or to the carrier itself. Primary disclosure is perceived as an administrative nuisance, whereas secondary disclosure has actually resulted in the inhibition of commercial initiative. The threat of secondary contract disclosure has caused opportunities to be lost both to carriers and to shippers.

Existing disclosure rules do not protect the confidential rights of the contracting parties. Moreover, they have probably resulted in the reduction in threshold qualifications for contract participation, e.g. the size of a minimum shipment tender and annual volume minimum thresholds. ATSF believes that judicial contract control offers adequate remedies for persons, including third

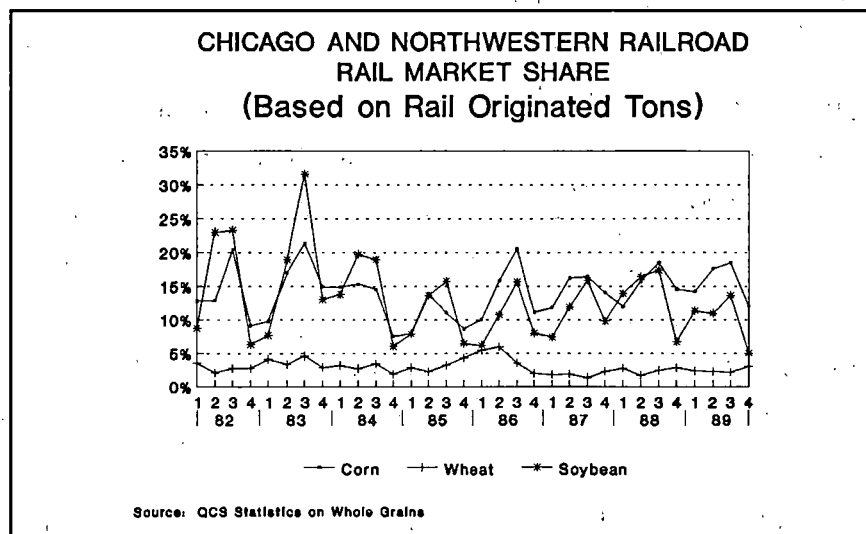
parties, who are injured by contracts. No additional remedies are necessary in the form of ICC oversight.

Changes in Disclosure Requirements. The ATSF strongly recommends that all grain contract disclosure requirements be eliminated: "A contract is a private agreement that is in its essence confidential." As mentioned earlier, ATSF believes that disclosure requirements have had no material effect in shaping its own commercial strategy. Its recent turn away from a contract format for codifying commercial agreements resulted from the carrier's increased marketing sophistication, rather than from any direct threat of contract disclosure.

H.3 C&NW'S COMMERCIAL STRATEGY DEVELOPMENT

As Figure H.7 demonstrates, C&NW's share in the corn market has stabilized at approximately 15%, after demonstrating high volatility early in the decade. Soybean market share has been more volatile than corn in recent years, and has averaged around 11%. C&NW's share of the originated wheat market hovers around 2 to 3%.

Figure H.7



H.3.1 BASELINE MARKET STRATEGY

The Chicago & Northwestern originates far more grain than it terminates. The principal grain commodities the carrier handles include corn and soybeans, which together account for fully 75% of its grain volume. The railroad serves a large grain originating territory, representing the marginal supply source for several destination markets. Historically, the C&NW has been a marginal peak period carrier in this service territory. During periods of grain market softness (e.g., the 1979 export embargo and 1981, when the domestic market collapsed), C&NW's grain traffic levels fell sharply. During soft markets, in the words of C&NW management: "The river bed spreads into Iowa" and barge operators become extremely cost competitive with rail direct services.

The C&NW's market strategy is designed to build a solid market base with the help of a limited number of broad based gathering contracts that apply to all C&NW origins. This contract base is intended to protect C&NW from severe downside risk. C&NW contracts are designed to give grain merchandisers and processors the flexibility they require to source from the many elevators located on the C&NW. Currently 85 to 90% of the railroad's total grain moves under contract.

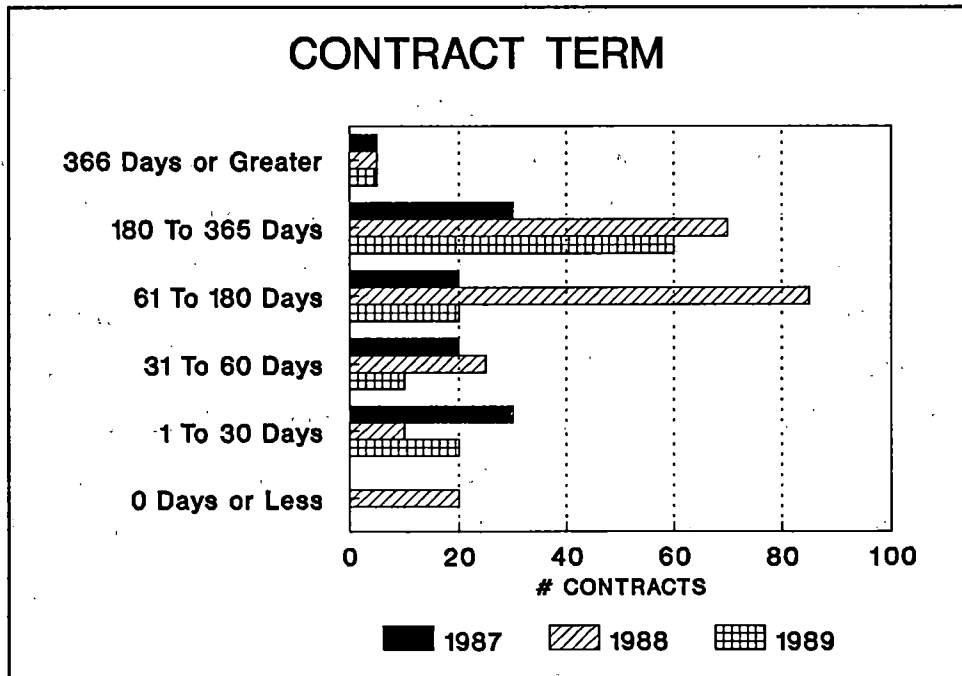
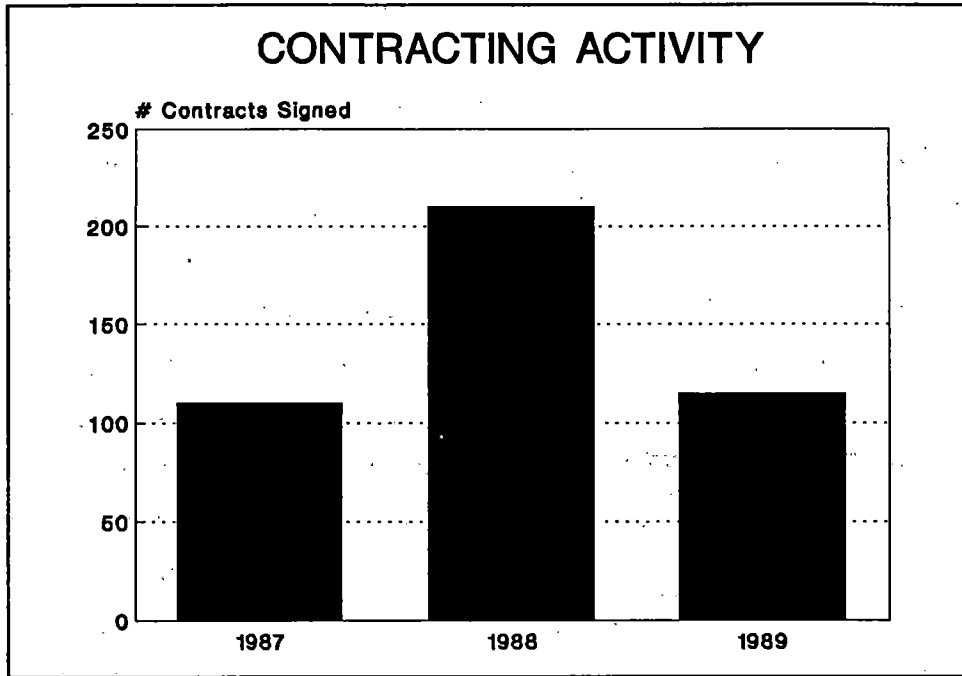
H.3.2 CURRENT CONTRACTING POLICY

The C&NW's contracting program has a strong receiver orientation. The principal contract holders on the carrier are multi-national grain merchandising companies (Figure H.9). The C&NW also contracts with grain processors and other receivers. This "demand pull" strategy, implemented for the first time in 1985, appears to have improved the market position of C&NW origin elevators. According to the carrier's management, after some initial resistance to its receiver oriented strategy, most elevator operators have supported the program, particularly once they began to experience the beneficial results of the C&NW's approach to contracting.

C&NW's contracts apply both to domestic and export grains. They also apply to multiple gateways, transshipment points, and on-line storage and processing plants. Contract holders have a great deal of flexibility to apply

Figure H.8

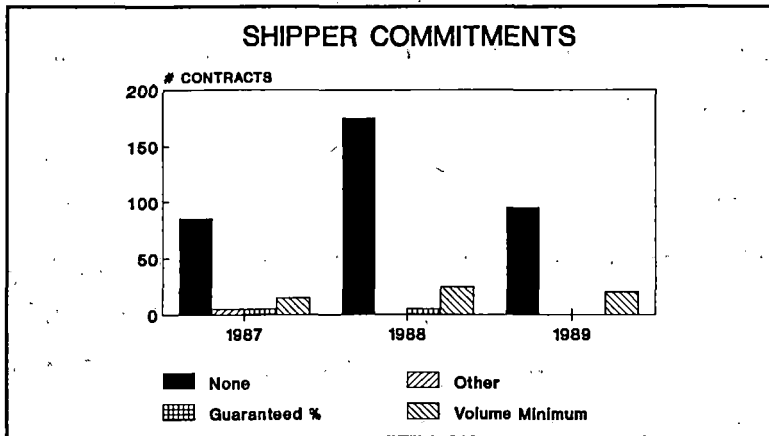
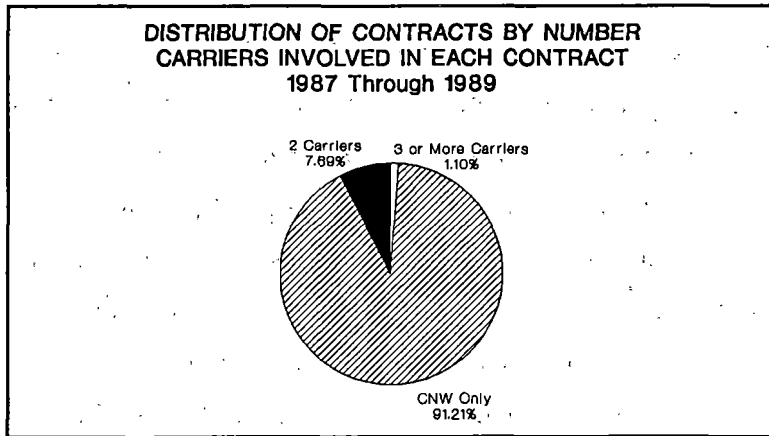
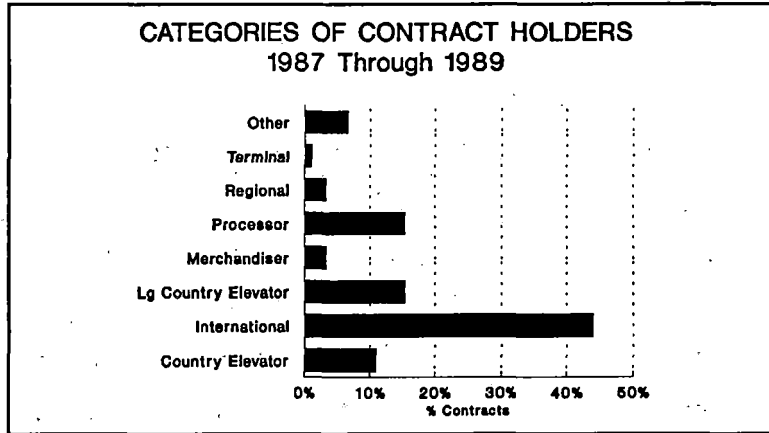
CHICAGO AND NORTHWESTERN TRANSPORTATION



Source: ICC Grain Contract Summaries

Figure H.9

CHICAGO AND NORTHWESTERN TRANSPORTATION



Source: ICC Grain Contract Summaries, 1987 to 1989

contract volume commitments. In general, the following terms apply in C&NW contracts: 1) the shipper makes an annual volume commitment; 2) an allowance is given below base rate levels; 3) contracts include specific penalties for liquidated damages if volume commitments are not made; and 4) no additional give backs or incentives apply.

In the past two years, the C&NW has experimented with a car guarantee contract that works in conjunction with the carrier's umbrella service contracts. These car contracts cover a small proportion of the C&NW covered hopper fleet. They were designed to help allocate equipment during tight markets like the ones that prevailed in 1988 and 1989, and to improve the yield of the carrier during a period of strong export demand. The car contracts guarantee future equipment availability to shippers who purchase them.

H.3.3 CHANGES IN MARKETING PRACTICE SINCE THE STAGGERS ACT

The C&NW was late to begin contracting. In 1981 most of its grain moved on multi-car tariff rates. The C&NW followed the export market down through 1985 when the carrier's grain contracting policy came into effect. With marginal refinements that policy continues to the present time.

C&NW moves most of its grain under annual umbrella contracts that apply from all C&NW origin elevators to on-line processing plants, to terminal elevators, to rail/barge transloading facilities, and to off-going junctions. In recent years, the railroad has offered master contracts to its two largest volume customers. Similar contracts, with slightly less advantageous terms, have been negotiated with other volume customers who are prepared to make somewhat lower volume commitments.

H.3.4 FUTURE TRENDS

No significant changes are expected in C&NW's current grain contracting strategy. In the future, 85% or so of C&NW grain will move under contract. Although the number of contracts may be reduced, the volume of grain moved under each contract will likely increase.

H.3.5 C&NW ON CONTRACT DISCLOSURE

Effects of Disclosure. As a matter of principle, C&NW opposes contract disclosure. However, C&NW has never received a secondary disclosure request. Inquiries from shippers regarding contract terms have never gone beyond the stage of informal inquiry. Still, C&NW believes that secondary contract disclosure could be damaging and that specific price information, if it were made publicly available, could disrupt market relationships.

C&NW believes that, if any benefit resulted from contract disclosure, it was the market-stabilizing benefit resulting from restraining the actions of overly aggressive carriers intent on increasing market share. It feels that potential information benefit resulting from disclosure is minimal. The market itself efficiently discounts all transportation contract information in any case. According to C&NW: "All information finds its way into the market place within 60 days of a contract effective date, with or without contract disclosure." However, since secondary disclosure has not become a commercial issue, disclosure compliance should remain a non-issue, as far as the carrier is concerned. The carrier is willing to accept contract disclosure as it exists today.

Changes in Disclosure Requirements. With regard to secondary disclosure, the C&NW believes that current rules are too liberal and that shippers filing complaints should prove that they can comply with contract requirements before gaining access to confidential contract data.

H.4 NORFOLK SOUTHERN COMMERCIAL STRATEGY DEVELOPMENT

NS gained market share from other eastern railroads in the mid-1980's. However, recently (since 1989) it has lost market share to CSX.

H.4.1 BASELINE MARKET STRATEGY

The Norfolk Southern serves both growing domestic processor and feed markets and volatile export markets in the Southeast. In recent years, the carrier's principal market development efforts have been targeted at the domestic market which includes, most importantly, grain millers and

processors, as well as poultry feeders. In order of significance, the grains Norfolk Southern handles include corn, wheat and soybeans. Domestic markets in its service territory have been growing at a rate of 3% per year. These are year round receiver markets with no large seasonal peaks and valleys.

The Norfolk Southern has a strong receiver orientation. The railroad contracts for large portions of the grain it handles, with 90% of its grain moving under contract. This contract activity covers both export and domestic processing activity.

Norfolk Southern's objectives in contracting for grain movements are threefold: 1) to tie up large volumes of grain received by feedmills, processors and exporters; 2) to price effectively against an aggressive competitor; and 3) to assure effective asset utilization.

H.4.2 CHANGES IN MARKETING PROCEDURES SINCE STAGGERS ACT

Norfolk Southern began to contract extensively with grain receivers in 1984. In that year, it began its current practice of signing refund agreements with feed mill operators. Grain contracting activity increased rapidly from that base and increased every year until 1987. More recently, in the past two years, contracting activity has leveled out. Approximately 80% to 90% of Norfolk Southern grains currently move under contract. These include 100% of export grains, which move exclusively on point-to-point contracts. A large proportion of grain to domestic processors and feed mills also moves under contract. The former contracts principally apply to 50 and 100 car unit trains in shipper furnished equipment. The latter contracts involve receiver refunds and include a broad array of potential grain suppliers. Rates that apply in these contracts include, principally, scale rates. However, some specific point-to-point prices have also been developed.

The principal shift in Norfolk Southern grain contracting policy since 1984 involves the handling of unit trains and an emphasis on asset utilization. Until two years ago, Norfolk Southern was reluctant to provide unit train operating incentives in the domestic markets. It believed that single and multiple car movements allowed for more flexibility and greater overall

operating efficiency. That policy has recently changed and Norfolk Southern has begun to implement contracting incentives encouraging use of 50 and 100 car operations.

H.4.3 CURRENT CONTRACTING POLICY

Norfolk Southern uses its single car tariff scale rates as a pricing umbrella. Price reductions below these published "umbrella" levels are included in contracts. A typical contract allows a feed mill, grain processor or grain exporter to gather grain over a broad area served by the Norfolk Southern. More than 80% of Norfolk Southern's grain originates on line.

A typical Norfolk Southern grain contract includes (Figure H.11) the following terms: 1) shipper volume commitment of either 90% of total shipments or specific numbers of cars moving in specified markets; 2) minimum tender amounts -- amounts almost always exceeding 15 cars and more frequently involving 50 and/or 100 car lots; 3) payment for shipments at tariff rate levels; 4) refunds at the term of the contract if all contract provisions have been complied with.

In its export contracts, Norfolk Southern allows for "stair-step" volume discounts -- as volume levels increase, greater discounts kick in at specific volume levels. In domestic contracts, however, the railroad does not offer volume incentive refunds. The same refund, for example, applies both to small and large volume movements to feed mills.

H.4.4 FUTURE TRENDS

Within the Norfolk Southern market, two trends in contracting are beginning to emerge: 1) service commitments with specific remedies for non-performance; and, 2) master contracts that include all prices, terms, and conditions to a specific account. The latter are beginning to be requested by large grain processing and grain merchandisers who want to simplify contract administration.

The volume of traffic moving under contract on Norfolk Southern is expected to continue increasing at the annual rate of 2 to 3%. Norfolk

Southern would prefer to use more railroad equipment to satisfy this growing market, since they have a strong philosophical preference for railroad controlled vs. shipper controlled equipment. However, in order to justify this investment, rate levels must increase or utilization levels must improve from current levels.

H.4.5 NORFOLK SOUTHERN ON CONTRACT DISCLOSURE

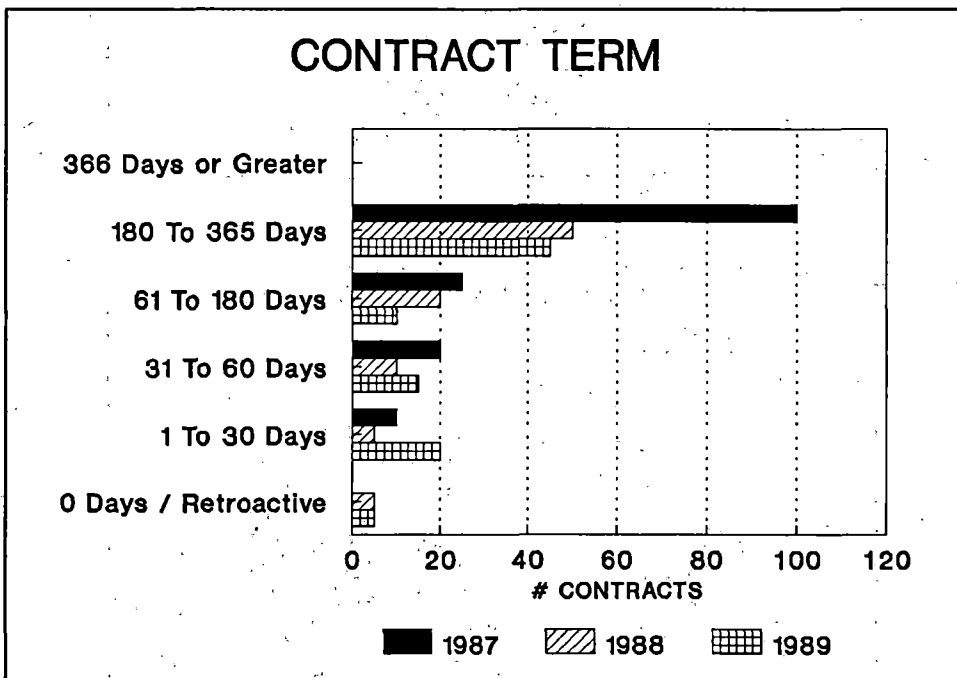
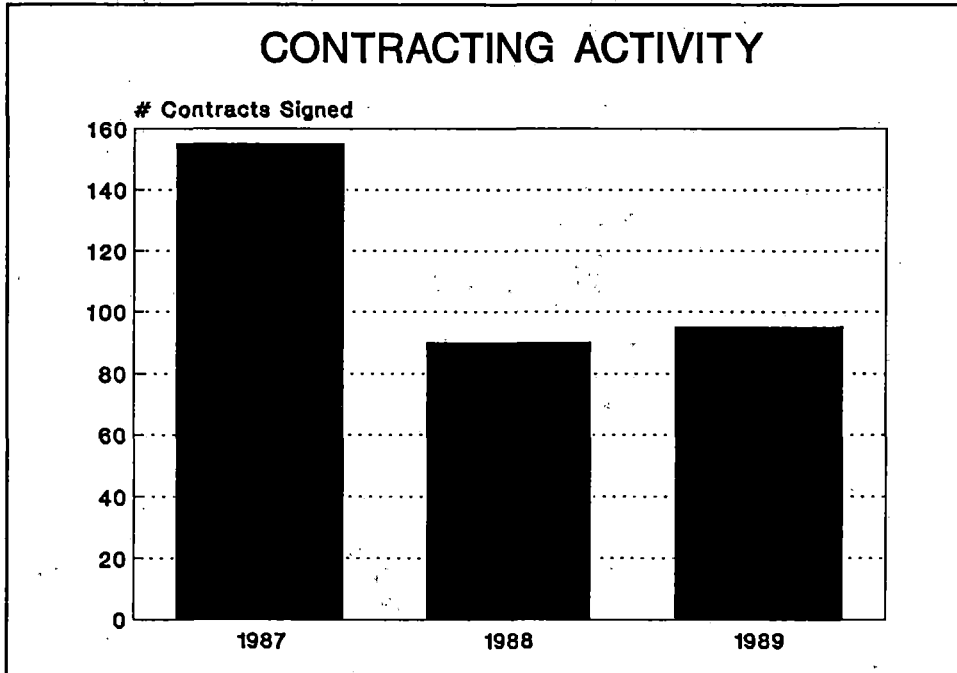
Effects of Disclosure. Disclosure has had minimal effect on Norfolk Southern's commercial strategy. Norfolk Southern feels that disclosure is more a concern to shippers than to carriers: "If customers want disclosure, fine. If they want to keep it secret that's fine, as well. Norfolk Southern is indifferent. It's more a concern to the grain customer."

Norfolk Southern maintains close scrutiny over the administrative costs of disclosure compliance. Grain contract administration requires, on average, 1.5 person hours/day or approximately 20% of a person year to administer the disclosure programs. From the railroad's perspective, no offsetting benefits result from compliance with disclosure rules.

In general, Norfolk Southern perceives contract disclosure as an administrative burden it would prefer to avoid. The carrier has received several informal requests for contract disclosure, although it has never been involved in a formal secondary disclosure proceeding.

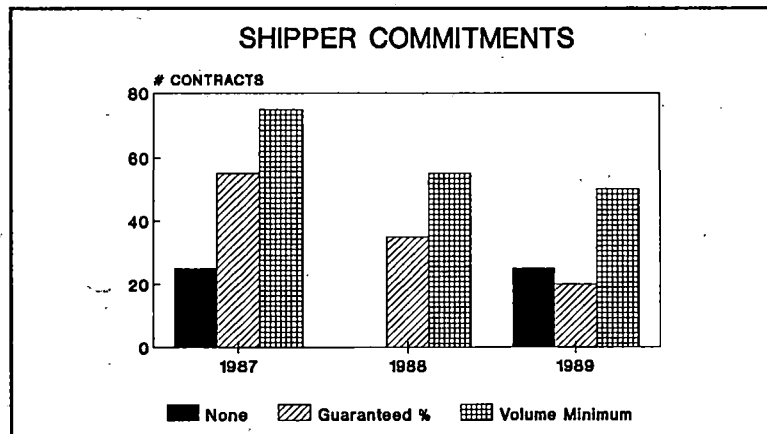
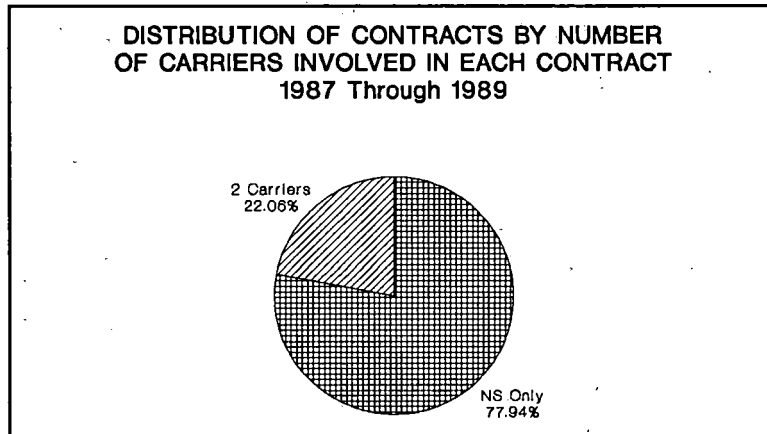
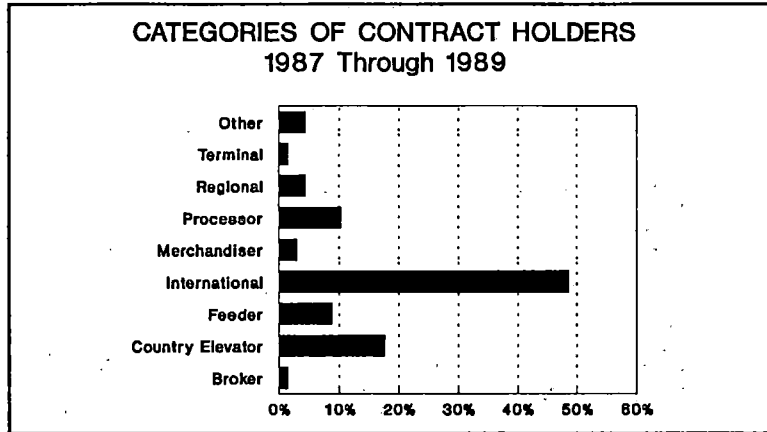
Changes in Disclosure Requirements. Because they serve no useful purpose, in the opinion of the carrier, it would prefer to see some of the current, primary disclosure requirements eliminated. These include the following: 1) Limitation on the number of cars assigned under contract; 2) Volume commitments; 3) Base rates and charges; and 4) All information about special features (e.g. credit terms, switching and transit time commitments). In addition, Norfolk Southern believes that the second tier disclosure rules are too liberal and that parties requesting secondary disclosure should be required to show cause.

Figure H.10
 NORFOLK SOUTHERN



Source: ICC Grain Contract Database

Figure H.11
NORFOLK SOUTHERN

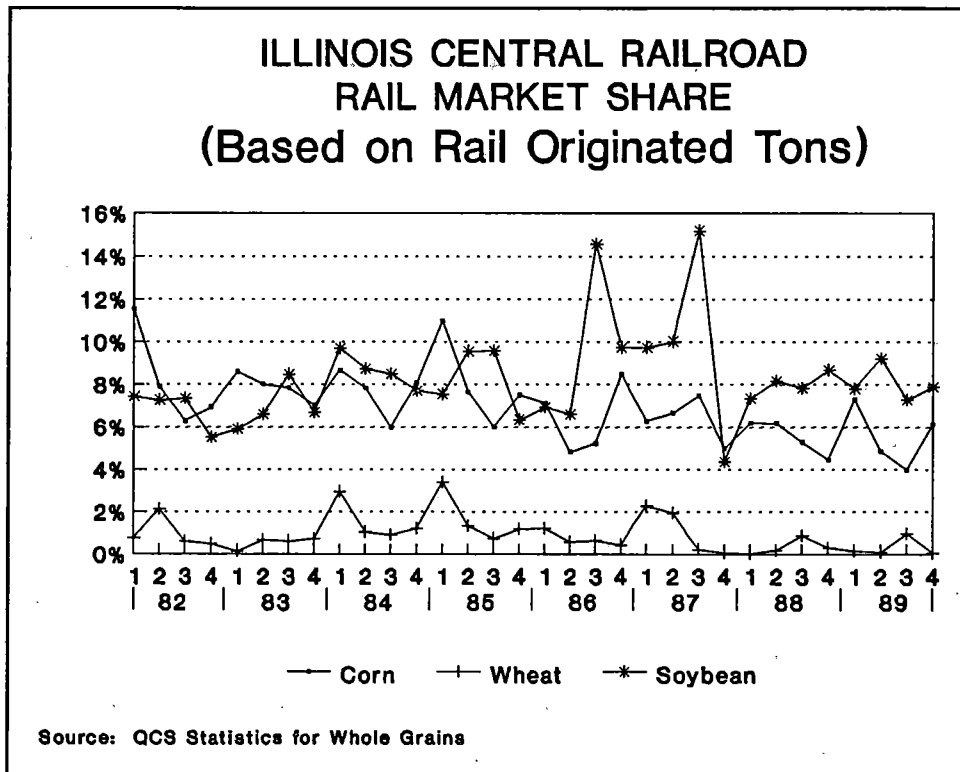


Source: ICC Grain Contract Summaries, 1987 to 1989

H.5 ILLINOIS CENTRAL COMMERCIAL STRATEGY

The IC's share of the originated corn market has declined progressively through the 1980's, to less than 6%. Its participation in the soybean market has been more variable, and in the most recent period exceeded 8%. As Figure H.12 shows, the IC's participation in wheat markets has been minimal.

Figure H.12



H.5.1 BASELINE MARKET STRATEGY

The IC serves a diversity of grain markets. Its market strategy is designed to meet the needs of distinct market segments within its service territory. Corn is the single largest volume commodity the IC handled, followed by soybeans and spring wheat. Most of the domestic grain it handles is local to its system. A large part of its export grain, however, is received in interchange from the C&NW, Soo Line, and Burlington Northern.

The IC has targeted four grain market segments, and has developed

distinct marketing programs for each. The targeted segments are the following:

- 1) the domestic poultry market -- here the principal customer focus is on poultry feeders located in Mississippi, Alabama and Louisiana. This market has been growing at 7% per year in recent years.
- 2) Domestic grain processors -- again, this market has a receiver orientation.
- 3) The rail/barge export market - the IC serves several major rail/barge transloading facilities.
- 4) All rail export - the railroad serves six major grain export elevators, located on the Gulf. Both its rail direct and rail/barge programs are oriented toward receivers.

The IC is directly competitive with river/truck operations for most of the grain it handles. The carrier also competes with CSX and Norfolk Southern in several markets where its distribution system overlaps with these railroads. In addition, 60 to 70% of the poultry feed it handles is directly competitive with other origination territories when destined to two regional railroads, the Mid South and South Rail.

H.5.2 CHANGES IN MARKETING PRACTICE SINCE THE STAGGERS ACT

The IC operates in a particularly volatile market environment where its competitive position is frequently challenged by short term fluctuations in barge rates, competing rail rates, export demand and dislocations in the Mississippi River system. As a result, the IC is notably active in its rate making activities. For the past five years or so the IC has adjusted its published price levels approximately seven times per year.

The basic marketing strategy currently in place on the IC has not changed since 1981. At the present time, 85 to 90% of the grain the IC handles, moves under contract. This percentage varies, however, by market segment: 1) the poultry market is principally oriented to tariffs. This orientation, however, is recent (since April 1989). Poultry feed grains previously moved under contract. 2) Grains destined to domestic processors located on the IC move principally under receiver oriented contracts. 3) Both rail/barge and rail direct export grain moves under receiver oriented contracts. The IC negotiates separate contracts with individual shippers in each market, even if single customers participate in several distinct market segments.

One trend that has emerged in recent years involves the development of more through rate, joint line contracts (Figure H.14). In the past, "rule eleven" contract movements predominated, in which through rates were built as a combination of local rates. The IC's aggressive rationalization program in 1986 and 1987 resulted in the divestiture of a number of branch lines to short lines who serve grain elevators. The IC includes these short lines and the elevators they serve in many of its contracts, on a through rate basis.

H.5.3 CURRENT CONTRACTING POLICY

The objectives the IC pursues through its grain contracting policy include the following: 1) improve the efficiency of grain gathering operations; 2) maximize share of available grain market; 3) attempt to smooth out highly seasonal grain flow peaks and valleys; and 4) lock in a reliable traffic base.

The IC tailors its contracts to the needs of customers in each of the four market segments that it serves. In general, the IC offers the same program to all shippers in comparable situations, within each segment. In this respect, standard contracts serve almost the same role as tariffs.

In general, the following terms apply in IC grain contracts: 1) shippers make volume commitments for the term of the contracts with specific penalties for noncompliance; and 2) rates are set for the term of the contract but are sometimes subject to seasonal adjustment. Figure H.13 provides a profile of the contracts signed by the IC.

The following special conditions apply to contracts in each of the distinct market segments the IC serves: 1) for domestic processors minimum monthly volumes are required. The IC makes a reciprocal equipment commitment. Price levels are generally related to the size of the volume commitment the shipper is prepared to make. 2) Rail-direct export contracts generally are available only in private equipment. Usually, these entail 60 and 120 car minimum tenders.

Rule eleven refers to shipments in which at least two of the participating carriers rate and bill the shipment separately.

Figure H.13

ILLINOIS CENTRAL RAILROAD

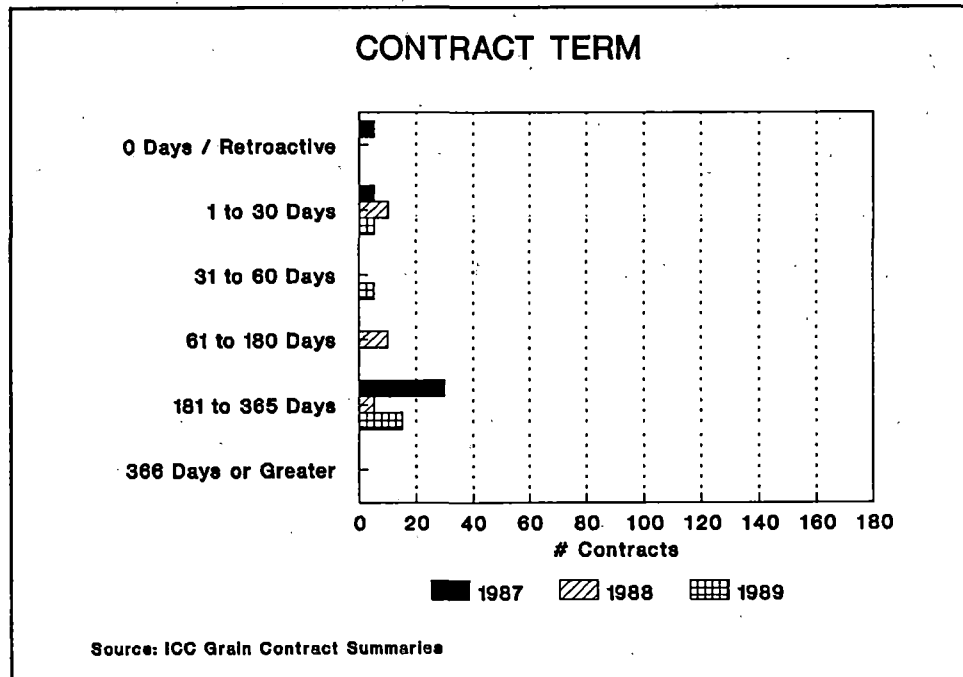
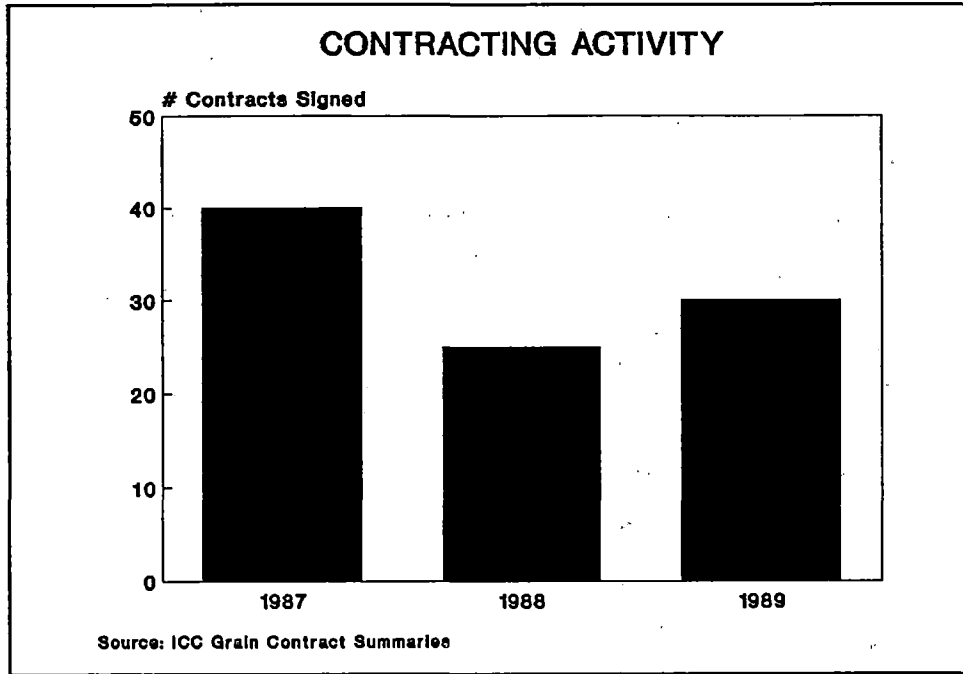
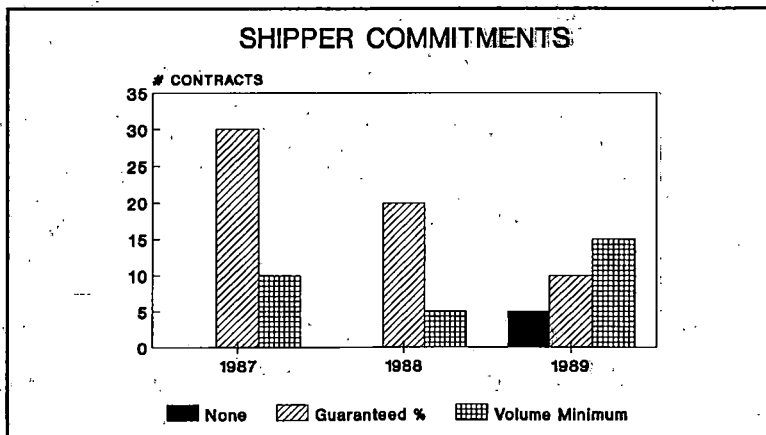
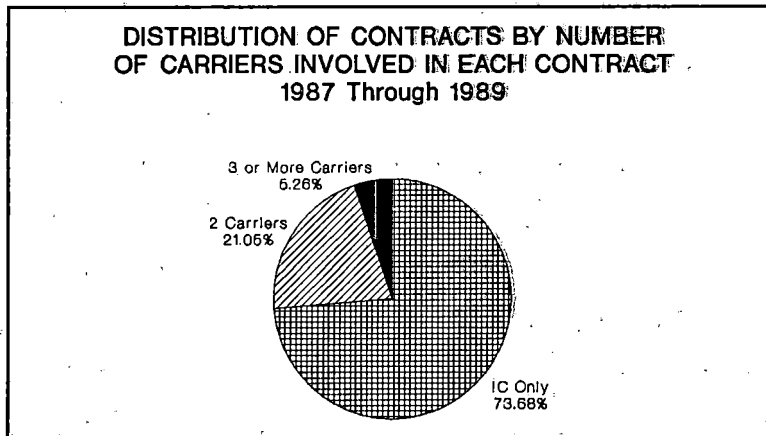
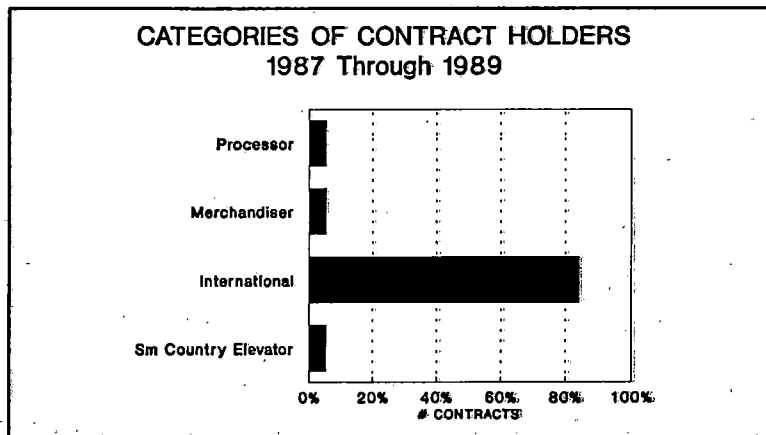


Figure H.14
ILLINOIS CENTRAL RAILROAD



Source: ICC Grain Contract Summaries, 1987 to 1989

H.5.4 FUTURE TRENDS

The trend on IC, as in most of the rail industry, is to increasingly move back toward a tariff format for service pricing and service specification. The industry's immediate need is to improve revenue yield. In the near term, however, the volume of grain the IC moves under contract will remain at current levels. Most of the future grain traffic growth on the IC will be within the market segments and market programs described above.

Contract features, which shippers are beginning to demand and which are already discussed in contract negotiations with shippers, include the following: 1) railroad equipment guarantees with specific penalties for noncompliance; 2) railroad on time delivery guarantees, with penalties for noncompliance; 3) interline contracts that entail single line billing and uniform contract provisions for the entire movement.

H.5.5 ILLINOIS CENTRAL ON CONTRACT DISCLOSURE

Effects of Disclosure. The IC does not enthusiastically support contract disclosure but neither is it willing to take a strong adversarial position against disclosure. Such a position might undermine its relationship with key customers. The IC believes that contract disclosure has had no material effect on the development of the carrier's own commercial strategy. It feels that primary disclosure is too extensive in its information requirements and that secondary disclosure is too liberal opening the possibility for abuse.

Changes in Disclosure Requirements. The IC believes that, because of disclosure, rails compete at a disadvantage in grain transportation markets versus barge and truck operators -- neither of whom must comply with contract disclosure requirements. The IC believes that no justifiable need exists for filing contract summaries in a prescribed format. The costs of maintaining a second set of contract summaries outweighs the benefit. The information contained in these summaries has limited value, in any case. If primary disclosure requirements remain in effect, the IC believes that less geographical detail

should be required. At the present time contract summaries sometimes include more detailed geographical specificity than do the contracts to which they correspond.

H.6 CHICAGO CENTRAL AND PACIFIC RAILROAD COMMERCIAL STRATEGY

The Chicago Central and Pacific accounts for only a minimal share of total U.S. grain. Its marketing policies and their evolution are of interest principally to the extent that they represent regional and short line carriers generally.

H.6.1 BASELINE MARKET STRATEGY

The Chicago Central and Pacific Railroad operates a single line running from Omaha to Chicago. At its western end, it serves the eastern portion of Nebraska. Through its branch lines, the railroad also serves much of the central portion of Iowa. The railroad moves grain from local country elevators at its western extremity to the Mississippi river at Dubuque for export and to Chicago for processing, storage, or for export through the Great Lakes. The railroad serves approximately 50 grain shippers, including a number of grain cooperatives, major food and feed processors, and international grain merchandisers. In important ways, the Chicago Central and Pacific is representative of other regional carriers who handle grain.

H.6.2 CHANGES IN MARKETING PRACTICE SINCE THE STAGGERS ACT

The Chicago Central and Pacific's (CC&P) current marketing strategy is to use contracts as a means of increasing its volumes and revenues. Many of the carrier's contracts entail annual volume commitments from its shippers. Since its ownership changed a few years ago, the carrier's grain marketing strategy has evolved. Its management feels it has performed well in developing shipper tailored contracts, rather than contracts on export movements. The CC&P has confined its contracting activity primarily on soybean-processing operations and domestic corn consumption.

The CC&P strategy is different for export than for other markets. In

domestic markets, the CC&P handles primarily soybeans and corn. In these markets, approximately 15% of the carrier's traffic moves under contract. The export grains move almost exclusively under tariff applications to the river port of Dubuque.

The CC&P handled 27,000 cars of grain in 1986, and expects to handle 45,000 cars in 1990. Over that period, the grain volumes moving under contract have actually decreased. CC&P has consciously reduced the number of movements handled under contract. The reluctance on the part of the railroad to enter into contracts, when tariffs can serve the same function equally well, is based on a perception that contracts expose the carrier to additional litigation risks -- risks associated with disclosure and risks which may cause divisiveness among CC&P customers.

CC&P grain markets are volatile. Substantial cyclicity exists in its export markets, and strong seasonality in its domestic markets. One of the objectives of the CC&P grain marketing program is to even out peaks and valleys.

In Iowa, both the C&NW and Union Pacific compete with CC&P. Over the last few years rising grain prices have allowed the CC&P to raise rates, in spite of continued pressure from these competitors.

H.6.3 CONTRACT POLICY

The CC&P believes that tariffs are superior to contracts. The superiority derives principally from the desire for equal treatment among shippers, particularly country elevator companies and smaller grain companies that do not qualify for the volume contracts which are structured into the carrier's tariff rates. CC&P requires minimum volume commitments in all of its contracts. The CC&P believes that if it is to contract at all, there must be some reciprocal consideration on the part of the shipper. Target customers for grain contracts include customers who are served by competing carriers and/or customers who are served only indirectly by the CC&P via a reciprocal switch or interline movement.

The CC&P also uses grain contracts to ensure balanced year-round

movements. The railroad writes contracts with large domestic processors such as ADM and Cargill. The CC&P is acutely aware of the geographical franchise within which it competes with other railroads. The carrier uses contracts as a means to secure incremental traffic and to cement long-term customer relations. However, the carrier is constrained in its use of multi-car and unit train tenders by its physical plant. Depending on the route over the CC&P a twenty-five to fifty car train is the maximum that can be handled. In instances in which the CC&P has developed through rates with interline carriers requiring unit trains or multiple car tenders, the regional carrier has asked its shippers to assist by expanding track holding and loading capacity. Where loading capacity expansion has taken place, the carrier has entered into longer-term contracts.

The railroad has found that specific commodities, notably soybeans, require distinct and individual contract treatment. One lesson the carrier has learned through trial and error is to require only guarantees that are easy to perform and to measure. The carrier has also found that no standard contract approach assures commercial success. Hence, CC&P contracts may vary widely in their substance and format.

H.6.4 FUTURE TRENDS

Over time, rail contracts have become less attractive to the CC&P. The CC&P believes that the trend is toward fewer contracts and more tariffs. It is the opinion of the carrier that streamlining the tariff filing process would reinforce this trend.

H.6.5 THE CC&P ON CONTRACT DISCLOSURE

Effects of Disclosure. The CC&P has received informal requests for contract disclosure from several shippers. These disclosure requests typically originate when a shipper finds, from contract summaries filed with the ICC, that a competitive contract exists. On such occasions, shippers have asked informally for contract rate parity with other shippers.

The carrier believes that disclosure requirements have had a negative effect on the amount of grain CC&P moves under contract. The railroad is

reluctant to enter into a contract if a tariff will do the same job. The railroad indicated that big shippers, in particular, are apprehensive about entering into contracts, because of the ability of others to discover contract terms.

The railroad attempts to monitor competitive contract summaries on a regular basis. Although the contract summary data is helpful, it is not as valuable as "listening to the grapevine." CC&P feels that compliance with the ICC-mandated disclosure requirements has been beneficial to shippers overall. CC&P believes the grain rate structure is more equitable for shippers than it would have been in the absence of disclosure. The CC&P did not support increased disclosure at the time it was being proposed in Congress, but the railroad does support it now. The CC&P indicates that the number of grain contracts that it writes has been reduced by approximately 80% since disclosure became effective.

The carrier hastened to add that the market environment for shipping grain has also been favorable over the past two to three years. This environment rather than any effects of disclosure has shaped the strategy of the CC&P. The railroad does not believe that disclosure has had any effect on the nature of CC&P contracts, contract terms, conditions, or contract duration.

Changes in Contract Disclosure Rules. The carrier would make a few changes in contract disclosure requirements. It would eliminate, as a primary disclosure requirement, volume breakpoints, any escalation provisions and comments on special contract features. In other respects, it is satisfied with contract disclosure as it stands.

One of the significant advantages of contracts over tariffs is the ability of the carrier to provide service immediately once terms have been negotiated. A tariff usually takes almost a month, including the time to publish and file with the ICC, before it can be placed into effect, whereas a contract requires only about 3 days to prepare and file with the ICC. The carrier would like to have the process of tariff filing streamlined so that delay between a negotiated agreement and the codification of a rate in a tariff can be minimized.