

# National TRANSCAER<sup>®</sup> Task Group

## Operating Protocol

### A. TRANSCAER and the TRANSCAER Organization

1. TRANSCAER (**T**ransportation **C**ommunity **A**wareness and **E**mergency **R**esponse) is a voluntary national outreach effort that focuses on assisting communities prepare for and respond to a possible hazardous material transportation incident. TRANSCAER members may consist of volunteer representatives from the chemical manufacturing, transportation, distribution, hazardous material storage and handling, emergency response and preparedness, and related service industries as well as the government, although this is not necessarily an exhaustive list.
2. TRANSCAER is organized into two groups: the National TRANSCAER Task Group (NTTG) and its included Executive Committee, which manages the TRANSCAER program; and the Regional Approach, which implements TRANSCAER and the nine TRANSCAER steps throughout the United States.
3. The NTTG is the managing body of the TRANSCAER initiative. The NTTG steers the overall direction of TRANSCAER, develops manuals and other tools to help the regional and state coordinators implement TRANSCAER, and manages TRANSCAER resources.
4. The NTTG Executive Committee is responsible for long range planning and coordination of all task group activities and is responsible for the conduct of NTTG business when the NTTG is not in session.

### B. Applicability

The following Protocol and Appendices govern the administration and activities of the NTTG.

### C. Antitrust Guidelines

The National TRANSCAER Task Group Antitrust Guidelines (Appendix A) will be adhered to during all NTTG and NTTG-sponsored meetings.

### D. NTTG Membership

1. Members of the NTTG may represent manufacturers, distributors, hazardous materials storage and handling, transporters, emergency response and preparedness organizations, their associations, and related service industries, although this is not an exhaustive list.
2. NTTG membership includes designated Sponsor representatives (see Section E.); TRANSCAER Regional Coordinators, and designated national level TRANSCAER Partner representatives (see Section F.). Others may apply to the NTTG Executive Committee, through the Staff Executive, for NTTG membership. Applications for membership, other than Regional Coordinators and Sponsor representatives, must be approved by the Executive Committee.
3. The NTTG Chairperson (Chair) and Vice Chairperson (Vice Chair) are appointed by the NTTG Executive Committee for two year terms of office, effective on January 1. The Vice Chair does not automatically succeed the Chair when the Chair completes his/her term.

TRANSCAER® Task Group  
Protocol

4. The NTTG will meet a minimum of four times a year. Meetings may be held by teleconference if determined appropriate by the Chair and the Staff Executive. The meeting dates for the following year will be selected at the last meeting of the previous year.
5. Each member of the NTTG is a working member, and is expected to take a leadership role in NTTG activities. Members are expected to have their employer's support for time necessary to carry out NTTG responsibilities.
6. Members must attend NTTG meetings. Substituting an alternate is discouraged and should be used only for imperative absences with advance notice to the Chair and Staff Executive. A member absent from three consecutive meetings, regardless of coverage by an alternate, may be asked to resign from the NTTG.
7. Because of potential antitrust concerns, the Staff Executive or individual designated to perform the functions of the Staff Executive, must attend all NTTG and NTTG-sponsored meetings. Additional information regarding the antitrust related duties of the Staff Executive may be found in Appendix A.
8. Among other duties, NTTG members are also expected to assist in recruitment of new TRANSCAER Sponsors.
9. TRANSCAER® Members who solicit funding must obtain prior written approval from the National TRANSCAER Task Group Executive Committee.

**E. TRANSCAER Sponsors**

1. TRANSCAER Sponsors (Sponsors) are organizations that support the goals and objectives of TRANSCAER and provide support to TRANSCAER through member/staff resources and financial contributions.
2. Sponsorship applications are submitted to the Staff Executive and are reviewed by the Executive Committee. Upon the recommendation of the Executive Committee, Sponsor applications are submitted to the NTTG with approval determined by the NTTG voting membership (see G.5.d. below)
  - a. In order to ensure a clear line of communication between the NTTG and Sponsors, each sponsoring organization will appoint a staff representative and, where appropriate, a member company representative. These Sponsor representatives serve as primary contacts on all NTTG matters. The Sponsor representatives will be expected to:
    - attend scheduled meetings of the NTTG;
    - meet once a year with the Executive Committee (preferably in February);
    - incorporate TRANSCAER into their emergency response training programs and communications materials;
    - keep the TRANSCAER website updated on association and member activities;
    - encourage their membership to participate in the TRANSCAER Regional Approach, where applicable; and
    - communicate TRANSCAER activities to their membership, as appropriate.
3. Sponsors are expected to support TRANSCAER projects and initiatives through donations of staff and other in-kind resources; and capital resources when feasible.
4. Sponsors may have additional representatives participate in NTTG meetings, but voting membership on the NTTG will be limited to the Sponsor staff representative and one Sponsor member company representative.

5. Each Sponsor will be allowed one representative on the TRANSCAER Awards Selection Committee.

## **F. TRANSCAER CHAMPIONS**

The TRANSCAER Champions recognition program is designed to pay tribute to the many organizations that provide resources and hands-on assistance to help make TRANSCAER programs successful. The Champions recognition program will also help increase interest in the initiative and potentially aid in recruitment of new participants, sponsors, and partners.

To become qualified to earn TRANSCAER CHAMPION status, applicants must have engaged in activity in at least two of the five scorecard items listed below during a given calendar year.

TRANSCAER Champions Scorecard Items (must meet two of the five to qualify):

- Are you an active participant in the National TRANSCAER Task Group?
- Are you an active participant at the TRANSCAER Regional or State program?
- Are you a National TRANSCAER sponsor?
- Have you led, sponsored a TRANSCAER event within the past 12 months, or supplied equipment/personnel for the event?
- Have you worked with an LEPC within the past 12 months to enhance their ER plan to include hazmat transport, or help schedule a TRANSCAER event?

## **G. TRANSCAER Partners**

1. Membership to the NTTG is generally limited to staff and member companies of NTTG Sponsors. However, the NTTG also understands that there are other organizations that share TRANSCAER principles to support continuous improvement and education in the area of hazardous materials transportation and emergency preparedness and response, but may not be associated with sponsoring organizations.
2. In those instances where an organization<sup>1</sup> (e.g. state association, company, institution or government agency) seeks affiliation with TRANSCAER as a TRANSCAER Partner, the organization must demonstrate that:
  - a. it has the formal recommendation of a TRANSCAER sponsor organization to become a TRANSCAER Partner;
  - b. it has a formal primary mission which is supportive of TRANSCAER beliefs, principles and philosophies;
  - c. it views TRANSCAER as a means to promote hazmat safety, rather than as a means to access contacts for commercial purposes;
  - d. it will allow TRANSCAER to participate in its activities; and
  - e. it is willing to participate on state TRANSCAER committees where they have presence.
3. TRANSCAER Partners are subject to the same terms and conditions as TRANSCAER Sponsors, including use of the TRANSCAER Service Mark. However, TRANSCAER Partners will not be listed on national level TRANSCAER collaterals (i.e. booths, manuals,

---

<sup>1</sup> National level associations are not included in this category inasmuch as those associations would be expected to seek TRANSCAER Sponsorship as opposed to Partner affiliation.

TRANSCAER® Task Group  
Protocol

TRANSCAER website, brochures, etc.) except those related to specific events in which the Partner is participating. This does not preclude inclusion of the names of specific individuals (including their organization affiliation), who may hold positions on the NTTG or NTTG-sponsored committees or groups, on collaterals where appropriate.

4. Application for status as a TRANSCAER Partner must be made to the NTTG through the Staff Executive. All applications for Partner status are reviewed by the Executive Committee. Upon the recommendation of the Executive Committee, applications are submitted to the NTTG with approval determined by the NTTG voting membership. (See G.4.d.)
5. Application for Partner status must include the following:
  - a. A description of the organization;
  - b. A written recommendation of a TRANSCAER Sponsor organization supporting Partner status for the organization;
  - c. A written description demonstrating that the organization:
    1. has a formal primary mission which is supportive of TRANSCAER beliefs, principles and philosophies;
    2. views TRANSCAER as a means to promote hazmat safety, rather than as a means to access contacts for commercial purposes;
    3. will allow TRANSCAER to participate in its activities;
    4. is willing to participate on state TRANSCAER committees where they have presence;
    5. is willing to incorporate TRANSCAER into their emergency preparedness and communications activities;
    6. will encourage their membership or contacts to participate in the TRANSCAER regional approach, as appropriate;
    7. will provide a forum to discuss areas of mutual concern;
    8. will keep the TRANSCAER website updated on its activities;
    9. will designate an individual(s) to serve as the primary point of contact for communication between the Partner and appropriate TRANSCAER Coordinators and the NTTG; and
    10. will adhere to the terms and conditions of this Protocol applicable to TRANSCAER Partners.
6. Partners are expected to support TRANSCAER projects and initiatives through donations of staff and other in-kind resources; and capital resources when feasible.
7. Partner organizations (those with operations in multiple regions) are eligible for membership on the NTTG. Any such Partner organization is limited to one voting member.

#### **H. Organization, Structure, and Administration**

1. NTTG Issues and Priorities
  - a. The NTTG will establish NTTG priorities annually, including development of an action

TRANSCAER® Task Group  
Protocol

plan, program work plan, relevant performance measures, and project/program funding requirements. Additionally, the NTTG will develop and maintain an up-to-date long-range strategic plan.

- b. The NTTG will develop and submit work plans for its projects and programs. These work plans will include objectives, appropriate timelines, and financial resources required.

2. Executive Committee

- a. The Executive Committee is responsible for long range planning and coordination of all NTTG activities and for the conduct of NTTG business when the NTTG is not in session. The Executive Committee is also responsible for developing the NTTG budget.

b. The Executive Committee shall approve all Regional Coordinators and State Coordinators, who shall serve for a two year term starting January 1, 2012. Individual may be nominated to serve additional terms at the expiration of their two year term, with such nominations subject to Executive Committee approval.

- c. Executive Committee membership consists of the current NTTG Chair and current NTTG Vice Chair, past NTTG Chair, at-large NTTG delegate, and TRANSCAER Staff Executive.

- d. The NTTG Vice Chair shall serve as Chair of the Executive Committee.

- e. The Executive Committee Chair shall be responsible for keeping the Executive Committee members informed regarding progress of Executive Committee activities and assigned tasks.

- f. The Executive Committee Chair shall furnish written reports to the NTTG Chair and Staff Executive in advance of each regular meeting of the NTTG concerning activities, plans and recommendations.

3. NTTG Budget

- a. The Executive Committee shall be responsible for developing the NTTG annual budget. The budget shall be presented to the NTTG for review and decision at the last meeting of the year preceding the budget year under consideration.

- b. In those cases where the annual budget includes direct funding opportunities to other organizations for the purpose of supporting TRANSCAER events or activities (e.g. grants), a process will be established to determine how those funds will be allocated. The process, created for the specific budget year, will be developed and administered by a committee consisting of the NTTG Chair and one representative of each of the Sponsor organizations. No requests for funds for these purposes will be entertained until the process has been agreed to by the committee.

4. Ad Hoc Committees and Groups

- a. The NTTG may establish committees and groups to address issues consistent with its priorities. Details related to the designation of these groups, including purpose, scope, and objectives shall be recorded in NTTG minutes.

- b. NTTG membership is not a prerequisite to serving on committees and groups.

- c. The NTTG Chair and Vice Chair shall be ex-officio members of all committees and groups and shall be furnished notices of their meetings. They, together with the NTTG Staff

TRANSCAER® Task Group  
Protocol

Executive, shall be furnished copies of all reports and correspondence pertaining to the committee/group activities.

- d. Committee/group Chairpersons shall be responsible for keeping their committee/group members informed regarding progress of activities and assigned tasks.
- e. Committee/group Chairpersons shall furnish written reports to the NTTG Chair, Vice Chair, and NTTG Staff Executive in advance of each regular meeting of the NTTG concerning activities, plans and recommendations.
- f. The NTTG Chair, in consultation with the NTTG Staff Executive, appoints committee/group Chairpersons and members.

5. Administration

- a. The NTTG may consider matters from any source provided they fall within the scope of Paragraph A. 3. of this Protocol.
- b. An agenda of matters to be considered at NTTG meetings shall be prepared and furnished to those involved in advance of the meeting.
- c. Minutes of NTTG meetings shall be prepared and distributed promptly. Corrections or additions shall be considered at the next meetings.
- d. Voting members of the NTTG shall include:
  1. designated Sponsor representatives (in cases where Sponsors have multiple representatives as members of the NTTG, voting membership will be limited to the Sponsor staff representative and one Sponsor member company representative – See also paragraph E.5.)
  2. TRANSCAER Regional Coordinators; and
  3. Designated TRANSCAER Partner representatives (see paragraph F.8.);
  4. Executive Committee members not otherwise represented in categories.
- e. Voting may be conducted by letter or e-mail ballot when, in the judgment of the Staff Executive, circumstances warrant.
- f. Additional administrative guidance related to meeting management and NTTG governance may be found in Appendix A, Section A.6.

6. Legal Assistance

- a. Requests for legal assistance shall be directed by the Staff Executive to the Organization providing the TRANSCAER legal counsel.

**I. TRANSCAER Awards**

1. Purpose

- a. The TRANSCAER awards program is designed to:

TRANSCAER® Task Group  
Protocol

1. Recognize the achievements of individuals, companies, and organizations which have gone beyond the normal "call of duty" to advocate, demonstrate, and implement the principles of TRANSCAER;
  2. Enhance the public recognition of TRANSCAER; and
  3. Increase participation in the initiative.
- b. The awards program is not designed to establish competition between TRANSCAER participants/entities except to the extent that such competition encourages furtherance of TRANSCAER objectives. Rather, the awards program is designed to recognize achievement in TRANSCAER implementation.
  - c. There is no requirement that any of the TRANSCAER® awards must be given. Additionally, there is no limitation as to the number of awards that may be given in any category in any one year.
2. TRANSCAER Awards, in order of award seniority, are:
    - a. TRANSCAER Distinguished Service Award
    - b. National Achievement Award
    - c. Regional Achievement Award
    - d. TRANSCAER Chairman's Award
    - e. Individual Recognition Award
    - f. TRANSCAER Certificate of Appreciation
3. Award Administration
    - a. Selection Process
      1. There is no requirement that any of the TRANSCAER awards must be given. If there are no eligible award candidates, then no awards should be made. However, if appropriate, a nominee may receive the same award in consecutive years.
      2. With the exception of the TRANSCAER Chairman's award and Individual Recognition Award, award recipients will be selected by the TRANSCAER Awards Committee.
      3. The TRANSCAER Awards Committee will be comprised of and governed by the following process:
        - a. Members of the TRANSCAER Executive Committee, except the Staff Executive.
        - b. The NTTG representative for each of the national TRANSCAER Sponsors (not already serving on the TRANSCAER Executive Committee).
        - c. No individual in consideration for an award may serve on the TRANSCAER Awards Committee during discussion of that award by the Committee. No company representative may serve on the Awards Committee during any session in which his or her company is being considered for an award, nor may any association representative of an association under consideration serve on the Committee during that session.

- d. Voting may be done by e-mail, fax, or in person, and will be done by secret ballot.
  - e. Votes will be tallied by the TRANSCAER Staff Executive and the results validated by TRANSCAER Counsel.
  - f. Unanimous support of all members of the TRANSCAER Awards Committee eligible to vote is required for selection of a recipient for the TRANSCAER Distinguished Service Award.
  - g. Selection of a recipient for the National Achievement Award shall be supported by no less than 75% of the members of the TRANSCAER Awards Committee eligible to vote.<sup>2</sup>
  - h. Selection of a recipient for the Regional Achievement Award shall be supported by no less than 75% of the members of the TRANSCAER Awards Committee eligible to vote.
  - i. The TRANSCAER Chairman's Award is given by and at the discretion of the NTTG Chair based on any criteria deemed appropriate by the Chairman.
  - j. Selection of a recipient for the Individual Recognition Award may be made by the TRANSCAER Awards Committee or Executive Committee. If the selection is made by the Awards Committee, the recipient must be supported by no less than 50% of the members of the Awards Committee eligible to vote. If the selection is made by the Executive Committee, the recipient must be supported by 100% of the Executive Committee.
  - k. A TRANSCAER Certificate of Appreciation may be given by and at the discretion of any State or Regional Coordinator, or by the Chairman of the NTTG.
4. Details regarding award eligibility and nomination criteria, notifications, and presentations may be found in Appendix B.

**J. Guidelines on the Use of the TRANSCAER® Service Mark – Please see separate documents titled: Final TRANSCAER® How to Use the Brand Guide and Intro To Brand Guide Letter.**

---

<sup>2</sup> Assuming there are 10 members on the Awards Committee, then 8 or more members must support the nomination to reach the 75% criteria. If two members of the Awards Committee are ineligible to vote because of item (c) of the Awards Committee governance process, then 6 members must support the nomination to reach the 75% criteria -  $(.75)(10-2)=6$ .

Appendix A

**A. Antitrust Guide for TRANSCAER NTTG Members**

1. Introduction

This is designed to be a layman's guide on how the antitrust laws apply to association-like activities, with particular reference to TRANSCAER National Task Group (NTTG) work. It is written for both the guidance of those committee members who have no particular knowledge of this complicated subject, and to provide a useful reminder or "refresher course" for those who have had the benefit of antitrust advice from their own company counsel.

The NTTG is a non-profit, multi-industry confederation of organizations and company representatives engaged in elements of hazardous materials transportation for the purpose of providing assistance to communities to understand the flow of hazardous materials through those communities and how to plan and prepare for hazardous materials incidents if they occur. The NTTG is composed of association staff representatives and company representatives, some of whom may be competitors of one another.

Whenever competitors meet together problems can arise under the antitrust laws. If the meeting or other activities among competitors is conducted through the NTTG, it is just as vulnerable to antitrust attack as if the same companies were meeting or acting together without the medium of the NTTG. It is recognized that organizations like the NTTG generally seek, quite properly, to promote understanding and cooperation among their members. But if this "cooperation" restrains competition, the NTTG, the associations and companies represented on the NTTG, and the NTTG members will be in trouble under the antitrust laws.

Antitrust enforcement is being emphasized as never before. The number of criminal and civil antitrust actions is steadily increasing. Congress has greatly increased both criminal and civil antitrust penalties, has made important procedural changes, and has substantially increased the budgets for the Antitrust Division of the Department of Justice and the Federal Trade Commission, the two agencies charged with antitrust enforcement. The courts are expanding the scope of antitrust prohibitions which may especially affect trade association-like activities, and such organizations are more frequently becoming the objects of FTC and Antitrust Division investigations. In view of these developments, increased awareness of the applications of the antitrust laws to association activities is essential.

Like most reputable organizations, the NTTG has objectives and programs that are well within the law. It also makes every effort to prevent possible antitrust abuses from arising. But a large responsibility also rests upon its member companies and associations --and particularly upon their individual representatives who serve on the NTTG and its committees. This means that NTTG members should know enough about this subject to be able, in their NTTG work, to avoid actions or discussions that might raise antitrust questions. The main purpose of this guide is to help all NTTG members to recognize what is, or might become, an "antitrust question."

Some actions or discussions are clearly illegal; many others are wholly legal and proper; and there is a sizable "gray area" or danger zone in between. This gray area between legal and illegal activity is often vague and uncertain, and the NTTG's policy continues to be to keep far away from the doubtful zones.

The NTTG's aim is not only to avoid actual violations of the law--it wants to prevent even any appearance of violation which might invite suspicion or investigation on the part of the enforcement authorities. To protect itself and its members in this respect, the NTTG has adopted and observes several basic policies:

- It has well-defined, constructive objectives and programs which are designed to promote the overall interest of the industry and the public.
- Its organizational structure consists primarily of groups and committees with specific and limited functional purposes; and activities concerned with pricing or marketing chemical products are scrupulously avoided.
- It maintains various procedural safeguards in the conduct of its meetings.
- It consults with legal counsel to help insure full observance of the above policies and procedures, and to provide guidance and protective advice as to all NTTG operations from an antitrust standpoint.
- It has approved the issuance of this "Antitrust Guide" to help NTTG members and others involved with TRANSCAER avoid problems under the antitrust laws.

## 2. Federal Antitrust Laws

Beginning in 1890, Congress has enacted a series of statutes which are known collectively as the federal antitrust laws. These laws are designed to promote and preserve our competitive private enterprise system by encouraging free and open competition in open markets. The federal antitrust laws give the force of law to the philosophy underlying our economic system, namely, that a free market in which supply and demand operate to determine the conditions and terms of production, distribution and sale, and where each seller and a buyer deals independently, serves to achieve the most equitable allocation of high quality goods and services at the lowest possible prices.

The central core of federal antitrust legislation is formed by the Sherman Act (1890) and the Clayton and Federal Trade Commission Acts (1914). Most states have also enacted antitrust laws similar to the federal statutes but no attempt is made to discuss them here. Similarly, there is no discussion herein of other areas of federal antitrust law (such as the Robinson-Patman Act and many parts of the Clayton Act) which may bear directly on the activities of individual companies but are usually not involved in association activities. The primary focus here is on horizontal conduct "i.e.", involving relationships between competitors, rather than vertical relationships such as those between a company and its customers.

Section 1 of the Sherman Act prohibits "contracts", "combinations" or "conspiracies" in restraint of trade or commerce. These are terms of collective action or conduct by two or more persons, and they include agreements and understandings of all kinds, whether written or oral, formal or informal, which unduly restrain competition. Because of the collective nature of most trade association activities, this section is the principal weapon used by the Department of Justice in antitrust suits against trade associations or their members. Such suits are usually based upon an alleged conspiracy or agreement among competitors to restrain trade. (The Federal Trade Commission also can, and does, challenge trade association activity which is alleged to lessen competition under Section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition.")

Although the language of the antitrust statutes is deliberately general in its coverage, prohibiting "(every) contract, combination or conspiracy in restraint of trade" and "unfair methods of competition," the courts have defined a number of specific activities as inherently unlawful, the so-called "per se" offenses (see "Prohibited Activities," *infr.*). The legality of other activities is

determined by the "rule of reason," i.e., whether the activity is ancillary to the achievement of a legitimate business objective and is no more restrictive of competition than necessary to achieve that objective. Although this necessarily involves difficult questions of interpretation, even here useful guidelines or antitrust compliance have evolved from the courts' decisions. The importance of obtaining legal counsel in any area of uncertainty cannot be overemphasized, for the sanctions imposed for violations of the antitrust laws are severe.

### 3. Antitrust Enforcement

The federal antitrust laws are enforced by the Department of Justice (Antitrust Division) and the Federal Trade Commission and frequently provide the basis for suits by private parties.

All of the following penalties can be imposed for violations of antitrust laws.

Imprisonment. Violations which are criminal offenses, including most prohibited collusive activities, are felonies. Prison sentences are increasingly common, and convicted felons may be denied citizenship, voting and other privileges.

Fines. Significant monetary fines for an individuals and corporations. An individual may not be reimbursed by his corporation for fines paid by him and fines are not deductible for income tax purposes.

Injunctive Court And Federal Trade Commission Orders. Orders (injunctions) which prohibit future violations or activities can be imposed as a result of civil action brought by the Department of Justice, the Federal Trade Commission, or private parties, with far-reaching consequences. Such injunctions may contain sweeping prohibitions which go well beyond the scope of the violations charged and prohibit conduct which is not itself considered contrary to the antitrust laws. Such orders can seriously limit freedom of corporate or association action, require burdensome and time consuming reporting obligations, cause day-to-day activities to be supervised by a court or agency, and even require dissolution of a trade association. Violation of an injunctive order issued by a court can result in contempt proceedings and/or significant monetary fines/penalties.

Treble Damages. A sanction which has been applied with increasing frequency as private antitrust suits have rapidly increased in recent years is the "treble damage" provision of the antitrust laws which allows persons or businesses injured by an antitrust violation to recover three times the amount of actual damages sustained. Such cases have resulted in hundreds of millions of dollars of damages being paid to private litigants. Thus, an antitrust violation could impair the financial resources of any corporation and significantly weaken its competitive position.

### 4. Prohibited Activities

Convictions for collusive activities can be based on a series of seemingly isolated facts which have been linked to present a chain of circumstantial evidence from which an agreement or conspiracy - a meeting of the minds - can be inferred; for example, identical price increases by competitors following shortly after a trade association meeting at which "business conditions" and the need of the industry for higher prices were discussed. For this reason it is important when participating in NTTG committee work or other related activities, which involve contact with other members of the industry, to avoid doing or saying anything which might even give an appearance of agreement with others in areas which may involve a lessening of competition.

- A. Agreements Involving Prices. Pricing is the most sensitive subject under the antitrust laws. "Price-fixing" encompasses not only agreements with competitors on a selling price. It may also include, for example, agreement to buy up surplus goods, to adhere to a formula for determining prices, to standardize discounts, to control raw material prices, and any other agreement which has the net result of affecting the price structure of a given product. Moreover, it is just as unlawful for competitors to agree on the prices at which they will offer to buy from their suppliers, as on those at which they sell. As previously noted, an agreement can be shown in a number of ways. Thus, even the mere exchange of price lists between competitors serves as evidence of an illegal price-fixing agreement.

The essential rule is that each seller must determine on its own the prices at which it purchases and sells. To avoid inferences of agreement or collusion--and there can be no exceptions-- NTTG members must not engage in any direct or indirect discussions with any competitors regarding prices, pricing policies, or any other marketing policy which may affect pricing. The following are a few examples of activities which have been found by courts to constitute evidence of illegal price-fixing.

Some supermarket executives were held to have violated the Sherman Act on the basis of evidence which included a trade association meeting where one participant made remarks to the general effect that it was time to stop passing lower wholesale meat prices on to the consumers and keep some or it for themselves. After viewing this and other evidence in light of the article pricing practices, the court upheld a jury verdict that the attendees at the trade association meeting had engaged in an illegal conspiracy to keep wholesale prices low and retail prices high. (The jury awarded plaintiffs a verdict for over 32 million dollars, plus the plaintiffs' attorneys' fees.)

In another case, the sales manager of the leading company in a market invited the sales managers of the other major companies in the market to a meeting at which he described a proposal for reclassifying distributors and changing discount schedules. No one present openly agreed to reclassify his distributors and change his discount schedules. Subsequent to the meeting, however, the leading company instituted the changes proposed at the meeting and the other companies, one by one, adopted the same distributor classifications and discount schedules. All of the companies and their sales managers were convicted of engaging in an unlawful conspiracy. The fact that all of the individual defendants were at the meeting, heard the discussion, and subsequently reclassified their distributors and changed their discount schedules, supported a jury finding that they had unlawfully conspired to fix prices.

Sales officials of corrugated cardboard box manufacturers in the Southeast followed a practice of occasionally calling each other to determine quotes given on specific and current sales to identified customers. The Supreme Court held the practice illegal because it had the effect of stabilizing prices (i.e., it tended to limit price reductions and the range of price changes). The decision was reached in spite of an express finding that the calls did not result in an actual agreement on prices. Rather, each defendant, on receiving a request for pricing information, usually furnished the data with the expectation that reciprocal information would be furnished to him. This simple exchange of information was held to establish an unlawful combination conspiracy under the Sherman Act.

- B. Agreements to Control Production or Sales. Competitors may not agree to limit or control production or sales. Any limitations on output by direct or indirect agreement are illegal

per se and cannot be justified, even where the purpose is to preserve the industry or conserve natural resources.

- C. Division of Territories and Allocation of Customers. Any agreement between competitors to divide or allocate either sales territories or customers is unlawful per se. Exchanges of information with competitors relating to customers or territories can create the appearance of such collusion or agreement and must be strictly avoided.
- E. Refusals to Deal. Any agreement among competitors which results in a refusal to deal with suppliers or other competitors - for example, a blacklist or boycott - is illegal per se. For this reason exchanges of information (e.g. credit information) concerning particular customers which might lead to a parallel decision not to deal should be avoided.

#### 5. Application of Antitrust Laws to TRANSCAER Activities

The valuable and proper activities of the NTTG and its committees/groups can be accomplished effectively if participating members are alert to the prohibited types of behavior described above and react quickly when danger signals appear.

Obviously, NTTG activities should be conducted in such a way as to avoid any possible inference of agreement among its members with respect to prices, controlling production or sales, division of territories, or refusals to deal in any form whatsoever. Further guidelines are given here to highlight potential danger zones to be avoided. When a danger zone appears, counsel should be consulted for specific guidance.

In reviewing the following guidelines there are a few general points you should bear in mind:

As indicated above, an otherwise lawful act may become unlawful if done for an improper purpose, or if it is part of a larger standardization program might be justifiable considered by itself, but not if it is combined with other activities to facilitate the fixing of uniform prices. In other words, the courts may look at the cumulative effect of several activities - not at each one separately.

Good motives are not an excuse for doing things that are otherwise unlawful, either because they fall within one of the "per se" categories discussed previously or because they are more restrictive of competition than necessary to accomplish their legitimate objectives. Thus even though a product standardization program may be intended to increase competition by providing consumers with important information, it may nevertheless be found unlawful if conducted in a manner more restrictive than necessary to achieve its legitimate purpose.

An ostensibly lawful program or activity runs a greater risk of getting into vulnerable areas if conducted by a group of competitors making the same product. That is the main reason why the NTTG operates primarily through functional committees (such as the NTTG Executive Committee and Awards Committee), and imposes limitations on the subject matter and duration of any "ad hoc" committees.

As a member of the NTTG, you and your company can be held responsible for any improper acts that may occur which you know about (or should know about), and if you fail to protest or disassociate yourself from them.

#### 6. Participation in NTTG Meetings

## TRANSCAER<sup>®</sup> Task Group Protocol

All NTTG meetings must be conducted in strict compliance with the following procedures. These procedures provide for agendas, designation of meeting Secretary (generally the Staff Executive), as noted below, and for the keeping of accurate and complete minutes--all of which are designed to avoid antitrust risks.

### A.. Meeting Secretary

The TRANSCAER Staff Executive will serve as the Secretary and as the Executive Committee's chief administrative representative for all meeting of the NTTG and its committees. It shall be the Staff Executive's duty and responsibility to see that all operations and proceedings of the NTTG and its committees and groups, are conducted in full conformity with their purposes and these Antitrust Guidelines, consulting with counsel as necessary. On all procedural questions arising within the NTTG, including matters related to established policy, the Staff Executive's decision shall be accepted, pending appropriate review.

In the absence of the NTTG Staff Executive, a member of the NTTG, committee, or group, may serve as the meeting Secretary provided the individual selected is familiar with and complies in whole with these Antitrust Guidelines.

### B. Meetings

The business of the NTTG and its committees and groups shall be conducted in executive sessions attended by its members and by others who have a leading role in matters to be considered at the particular meeting. Each NTTG meeting shall be an executive session of assigned members of the NTTG plus any members of the relevant committee/group who wish to be present.

Frequency. The NTTG, its committees and groups will meet only as necessary to perform authorized business as determined by the Chairman in consultation with NTTG Staff Executive. Meetings should not be held where subject matter can be adequately and practicably handled by correspondence or telephone between the Staff Executive and individual NTTG members.

Location. To the extent practicable and in the absence of cogent reasons for being elsewhere, all committee and NTTG meetings should be held in the Washington, DC metropolitan area. Other locations may be considered on occasion in instances when they would afford greater convenience and cost savings to attendees, and/or opportunities that would enhance NTTG objectives that were not available in the Washington area.

Agenda. Following consultation with the committee/group chairman, the NTTG Staff Executive (or person assigned as secretary to the group) shall prepare a written agenda prior to each of its meetings.

Attendance of NTTG Staff Executive. No NTTG meeting or meeting of its committees or groups shall be held without the attendance of the NTTG Staff Executive. In the absence of the NTTG Staff Executive, the Chairman of the committee or group will be required to perform the duties of the NTTG Staff Executive. [See following paragraph titled *NTTG Committees and Groups*]

Minutes. The NTTG Staff Executive (or person assigned as secretary to the group) shall keep accurate and complete minutes of all business transacted at each meeting.

Discussions Limited to Agenda. All substantive discussions at any NTTG meeting or meetings of its committees/groups are to be limited to authorized aspects of subjects on the agenda, except where additions to the agenda are specifically approved by the NTTG Staff Executive (or person assigned as secretary to the group). The Staff Executive's decision as to the propriety of any subject matter raised for discussion at any meetings shall be accepted, pending appropriate review. Any discussions or occurrences on the occasion of any meeting which are contrary to NTTG's policies or rules and which have come to the Staff Executive's attention shall be reported promptly by him (or her) to his (or her) supervisor and to legal counsel.

NTTG Committees/Groups. The foregoing rules on meetings are applicable to all committees, task groups, and any other working groups, and any other working groups meeting under NTTG auspices, except that subparagraphs (c), (d), and (e) may be modified as indicated below in those cases where the group must meet in order to carry out a limited and specific written assignment from the parent committee and it is impractical for a staff executive to be present. In each such case, (i) the specific assignment must be set forth in the parent committee's minutes; (ii) the Staff Executive must be satisfied that the meeting in question is necessary and that the subject matter is not such as to require staff presence, (iii) the chairman of the group is to be responsible for carrying out the duties of the NTTG Staff Executive, including particularly those specified in subparagraph (f) above; and (iv) the chairman must promptly make an accurate and complete written report to the parent committee and to the NTTG Staff Executive as to everything occurring at such meeting.

The attitude of enforcement personnel will be governed by what committee or task group members actually do, not by what is said in reports or minutes that may be incomplete or inaccurate.

Advocacy should be conducted in lawful ways and directed solely at efforts to influence that policy. It should not be used as a sham or as a means to affect competition directly and independently of what would be the effect of the government policy which is sought to be influenced.

While committee agendas will have been cleared in advance, it is the obligation of all committee members to make sure that their own participation in committee meetings will not give rise to even an inference of antitrust wrongdoing. Thus, even when carrying out approved and legitimate activities members of the NTTG, its committees and groups, must be careful to avoid discussions or exchanges of information with their competitors on any subject relating to the "per se" restraints listed above since such discussions or information exchanges may give rise to inferences of agreement. As examples, you should avoid any discussion with competitors of the following:

Individual company prices, price changes, price differentials, mark-ups discounts allowances, credit terms, etc.

Individual company figures on costs, production, capacity, inventories, sales, etc.

Industry pricing policies, price levels, price changes, differentials, etc.

Changes in industry production, capacity, or inventories.

Transportation rates or rate policies of individual shipments or particular products, including basing point systems, zone prices, freight equalization, etc.

Bids on contracts for particular products; procedures for responding to bid invitations.

Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.

Matters relating to individual suppliers or customers that might have the effect of excluding them from any market.

Regardless of subject matter, you should not attend or tolerate any meeting with your competitors in connection with NTTG business which has no agenda, which is concerned with matters outside your committee's or group's terms of reference, or which otherwise fails to conform with established procedures.

### C. Informal Gatherings

It is important to avoid discussions of the above subjects, not only at formal NTTG and NTTG committee/group meetings, but also in connection with social or other gatherings on those occasions. If any improper discussion should start in your presence, you should protest; if the discussion continues, you should promptly excuse yourself from the group and communicate your protest to the Staff Executive. Even if you do not take part in any improper discussion, your presence without participation could still get you and your company into trouble. Any individuals who participate in such improper discussions, whether deliberately or innocently, are doing their companies, and NTTG, a real disservice, and subjecting themselves to possible liability. In case of doubt as to whether a particular subject may properly be discussed with your competitors, you should consult your own company counsel.

### D. Documents

Care must be taken to avoid wording any written documents including reports or notes from committee meetings in a way that might be interpreted as indicating, contrary to fact, the existence of an antitrust violation. Every memorandum, letter or other document dealing with prices, competition, or the other danger areas specified in this guide should be written with the assumption that it will one day be examined for antitrust implications. An antitrust case may be based on documents which are in reality innocent or innocuous but have been written in such a way as to create suspicion and require explanation. Such documents may include personal notes based on recollection, or taken at committee or other meetings, which record personal impressions rather than the facts of what transpired.

### E. Conclusion

This guide is designed help you to understand how the antitrust laws bear upon NTTG activities, and to carry out your NTTG work in full compliance with these laws and with NTTG policies. Again, please remember that this is a limited outline and is not intended to be a complete description of the application of the antitrust laws. For answers to specific problems, you should consult counsel.

## **B. Antitrust Checklist for NTTG Meetings**

TRANSCAER<sup>®</sup> Task Group  
Protocol

This antitrust checklist is for use by the NTTG in the conduct of NTTG-sponsored meetings. Prohibited discussion topics apply equally to social gatherings incidental to NTTG-sponsored meetings. The checklist is not exhaustive and does not address antitrust issues relating to activities other than NTTG meetings. Participants in NTTG meetings also should be thoroughly familiar with the Antitrust Guide for NTTG Members (Section A of this Appendix).

Do ensure strict performance in areas of:

Oversight/supervision:

Have the NTTG Staff Executive or representative designated to perform the duties of the NTTG Staff Executive at each NTTG or NTTG-sponsored meeting;

Consult with counsel on all antitrust questions relating to NTTG-sponsored meetings;

Limit meeting discussions to agenda topics (unless additional topics have been approved by the appropriate the NTTG Staff Executive or NTTG Chairman; and,

Provide each company or association representative attending an NTTG-sponsored meeting with a copy of this checklist, and have a copy available for reference at all NTTG-sponsored meetings.

Recordkeeping:

Have an agenda and minutes which accurately reflect the matters which occur;

Provide agendas and minutes to the NTTG Staff Executive for review and approval in advance of distribution; and,

Fully describe the purposes and authorities of all task groups, work groups, ad hoc or other standing committee subgroups in the minutes of the appropriate parent committee/group.

Vigilance:

Protest against any discussion or meeting activities which appear to violate this checklist; disassociate yourself from any such discussion or activities and leave any meeting in which they continue.

Do not, in fact or appearance, discuss or exchange information on:

Prices, including:

Individual company prices, price changes, price differentials, markups, discounts, allowances, credit terms, etc.;

Individual company data on costs, production, capacity, inventories, sales, etc.; and,

Industry pricing policies, price levels, price changes, differentials, etc.

Production, including:

TRANSCAER® Task Group  
Protocol

Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers; and,

Changes in industry production, capacity or inventories.

Transportation rates:

Rates or rate policies for individual shipments, including basing point systems, zone prices, freight equalization, etc.

Market procedures, including:

Company bids on contracts for particular products; company procedures for responding to bid invitations; and,

Matters relating to actual or potential individual suppliers or customers that might have the effect of excluding them from any market or influencing the business conduct of firms toward them.

## Appendix B

### TRANSCAER Awards Guidelines

1. Purpose
  - a. The TRANSCAER awards program is designed to:
    1. Recognize the achievements of individuals, companies, and organizations which have gone beyond the normal "call of duty" to advocate, demonstrate, and implement the principles of TRANSCAER;
    2. Enhance the public recognition of TRANSCAER; and
    3. Increase participation in the initiative.
  - b. The awards program is not designed to establish competition between TRANSCAER participants/entities except to the extent that such competition encourages furtherance of TRANSCAER objectives. Rather, the awards program is designed to recognize achievement in TRANSCAER implementation.
2. TRANSCAER Awards, in order of award seniority, are:
  - a. TRANSCAER Distinguished Service Award
  - b. National Achievement Award
  - c. Regional Achievement Award
  - d. TRANSCAER Chairman's Award
  - e. Individual Recognition Award
  - f. TRANSCAER Certificate of Appreciation
3. Award Administration
  - a. Eligibility and Nomination Criteria
    1. Eligibility and nomination criteria for TRANSCAER awards vary depending on the level of award as detailed in the following sections specific to the awards. However, all award nominations must be submitted to and recorded by the National TRANSCAER Staff Executive. Only those award nominations that are, in the judgment of the National TRANSCAER Staff Executive, complete and meet the administrative requirements for the award will be forwarded to the TRANSCAER Award Committee. In the performance of these specific duties, the Staff Executive will make no determination as to the merit of the award nomination during this administrative review for completeness.
    2. Self-nominations will not be accepted for the TRANSCAER Distinguished Service Award or the TRANSCAER Chairman's Award.
    3. Nominations must be submitted on the official TRANSCAER Awards Nomination Form. Forms are available on the TRANSCAER website or can be requested from the National TRANSCAER Staff Executive. Additional supporting material is

encouraged and may be appended to the form, and must be in a format that can be easily copied and distributed to the TRANSCAER Awards Committee.

b. Notifications and Announcements

1. In March/April of each year, the Staff Executive will formally notify all award recipients in writing. Persons submitting unsuccessful nominations will be notified in writing.
2. Award winners will be announced through the TRANSCAER newsletter, website, trade press, and other media. A press release will be issued by ACC on behalf of the TRANSCAER program.

c. Presentations

1. **TRANSCAER Distinguished Service Awards** and **National Achievement Awards** will be presented by a member of the Executive Committee (or their designee from the NTTG) at a place the winner chooses.
2. **Regional Achievement Awards** will be presented at an Annual TRANSCAER Workshop or other event selected by the Regional Coordinator of the region for which the recognition is given. Regional Achievement Awards will be presented by the Regional Coordinator or member of the Executive Committee (or their designee from the NTTG).
3. **Individual Achievement Awards** may be presented by a member of the Executive Committee (or their designee from the NTTG), Regional Coordinator or State Coordinator at an appropriate event mutually agreed to by the recipient and the presenter.
4. TRANSCAER awards given to groups of individuals will consist of one formal award given to the "group" with each member of the group receiving certificates bearing the award level and award citation.
5. **TRANSCAER Chairman's Awards** will be made in-person, if at all possible, by the NTTG Chairman at a venue mutually agreed to by the award recipient and the Chairman.

4. TRANSCAER Distinguished Service Award

- a. The TRANSCAER Distinguished Service Award is given in recognition of exceptionally meritorious service to the public in a TRANSCAER capacity. The performance must be such as to merit recognition for service which is clearly exceptional. Exceptional performance of normal TRANSCAER activities will not alone justify this award.
- b. There is no limitation as to the number of awards that may be given in any one year, however, it is expected that this award will be for such exceptional service that its issuance will be rare.
- c. Any subsequent TRANSCAER Distinguished Service Award to the same individual, company, or organization must be justified with service that significantly surpasses the service rendered for the previous award.
- b. Self-nominations will not be accepted for the TRANSCAER Distinguished Service Award.

5. National Achievement Award

TRANSCAER® Task Group  
Protocol

- a. The National Achievement Award is given in recognition of extraordinary achievement by an individual person, individual company, individual organization, or a team (of individuals, companies, or organizations) in support of the TRANSCAER initiative that extends beyond the geographic boundaries of any one region.
- b. There is no limitation on the number of awards that may be given in any year.
- c. The minimum eligibility criteria for the award are as follows:
  1. Activities for which nominated must have been billed or co-billed as TRANSCAER activities; and
  2. Nominations must show documented evidence that the efforts for which the nomination is made resulted in the delivery of TRANSCAER tools to **new** audiences in **multiple** regions OR the efforts resulted in recruitment of new TRANSCAER membership/participation in more than one region.
  3. The nominee's reputation and actions must be consistent with the principles of TRANSCAER.

6. Regional Achievement Award

- a. The Regional Achievement Award is given in recognition of extraordinary achievement by an individual person, individual company, individual organization, or a team (of individuals, companies, or organizations) in support of the TRANSCAER initiative.
- b. There is no limitation as to the number of awards that may be given in any one year.
- c. The minimum eligibility criteria for the award are as follows:
  1. Activities for which nominated must have been billed or co-billed as TRANSCAER activities; and
  2. Nominations must show documented evidence that the efforts for which the nomination is made resulted in the delivery of TRANSCAER tools to **new** audiences in **multiple** geographic locations OR the efforts resulted in recruitment of new TRANSCAER membership/participation in multiple geographic locations.
  3. The nominee's reputation and actions must be consistent with the principles of TRANSCAER.

7. Chairman's Award

- a. The TRANSCAER Chairman's Award is given by and at the discretion of the NTTG Chair based on any criteria deemed appropriate by the Chairman.
- b. There is no limitation on the number of awards that may be given in any year.
- c. Self-nominations will not be accepted for the TRANSCAER Chairman's Award.

8. Individual Recognition Award

- a. The Individual Recognition Award recognizes the special effort of any individual, team, company, or other organization in advancing the principles of TRANSCAER.

TRANSCAER® Task Group  
Protocol

- b. The efforts for which the recipient(s) is (are) nominated need not be billed as TRANSCAER activities, but must be consistent with the principles and objectives of TRANSCAER.
  - c. There is no limitation on the number of awards that may be given in any year.
9. TRANSCAER Certificate of Appreciation
- a. A TRANSCAER Certificate of Appreciate may be given to any individual, team, company, or other organization assisting in a TRANSCAER event.
  - b. A TRANSCAER Certificate of Appreciation may be given by and at the discretion of any State or Regional Coordinator, or by the Chairman of the National TRANSCAER Task Group.
  - c. There is no limitation on the number of awards that may be given in any year.

