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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION *et al.*,

Plaintiffs,

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION,

Intervenor- Plaintiff,

v.

ATTORNEY GENERAL ROB BONTA, *et al.*,

Defendants.

Case No. 3:18-CV-02458-BEN-DEB

INTERVENOR-PLAINTIFF OOIDA REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Judge: Hon. Roger T. Benitez
Date: August 28, 2023
Time: 10:30 a.m.
Courtroom: 5A

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I. INTRODUCTION

For the first time, Defendants reveal how they will interpret AB-5 to allow independent contractor drivers to come into compliance with the law. Defendants describe two alternatives, becoming a driver with their own motor carrier operating authority or becoming an employee driver. Neither of these options is operating as an independent contractor driver, confirming Intervenor OOIDA's argument that AB-5 was intended to abolish all independent contractor drivers' businesses—not establish a new test to better root out misclassification.

Defendants also assert, for the first time anywhere that OOIDA is aware, that truck drivers may use AB-5's business-to-business exemption to qualify as independent contractors under the *Borello* classification test. If this exception is available, it conflicts with federal Truth-in-Leasing regulations that make the exemption available only to California intrastate truckers and not to truckers operating in interstate commerce. This discrimination against interstate commerce is a *per se* violation of the U.S. Constitution.

Defendants downplay the burdens imposed on motor carriers and drivers who can no longer operate with or as independent contractor drivers. Not every independent contractor driver has the knowledge or experience to become a motor carrier and manage the many federal statutes and regulations that govern motor carriers. The complete elimination of the owner-operator model for those drivers who have created and worked hard to establish their businesses under that model constitutes a substantial burden under the standard in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Furthermore, Defendants provide no evidence to rebut Plaintiffs showing that the State has, at most, minimal interest in applying AB-5 to truck drivers based outside California who spend a minority of their time there.

The abolition of independent contractor drivers' small businesses also serves as the ultimate expression of animus by lawmakers and supporters of AB-5 against them. The Legislature professed in the text of AB-5, and Defendants repeated to the

Court in their memoranda, that the Legislature's rational basis for enacting AB-5 was to address worker misclassification issues in California. *See* State Defendants' Opp. to Intervenor-Plaintiff OOIDA's Motion for Preliminary Injunction (ECF 175)(hereinafter State Opp.) at 2, 4, 12-13, 17-18, 21-24, 27; IBT Opp. (ECF 173) at 1-2, 12, 22-24, 33, 36-38, 40, 48, 50. But Defendants provide no rational basis for giving *only* California intrastate truckers an exemption to AB-5's protections, while at the same time completely abolishing all interstate independent contractor drivers' small businesses (particularly those who were not misclassified), barring them from the trucking industry in California. The Legislature's efforts to use AB-5 to address misclassification of some drivers with their own deliberate misclassification of true independent contractors confirms their animus toward this part of the trucking industry and is an irrational basis for the law.

II. ARGUMENT

A. Defendants confirm that AB-5 abolishes small businesses operating as independent contractor drivers in interstate commerce.

Defendants confirm OOIDA's analysis of AB-5—that the law abolishes small businesses operating as independent contractor truck drivers in interstate commerce. Under Prong B of AB-5's ABC test, to establish that a worker is an independent contractor, the company must show that "[t]he person performs work that is outside the usual course of the hiring entity's business." Cal. Lab. Code § 2775(b)(1)(B). The plain language of the statute forecloses the existence of independent truck drivers, who perform work that is within the usual business of their motor carrier, a company that provides truck transportation to shippers.

Defendant/Intervenor International Brotherhood of Teamsters (IBT) and the State say independent contractor drivers can continue to work, so long as they are willing to be employees or motor carriers, neither of which is an independent contractor driver business. For the first time, however, the State also proposes AB-5's business-to-business exemption as a way that drivers could operate an

independent contractor business. State Opp. (ECF 175) at 9-10; Defendant-Intervenor's Opp. to Motions for a Preliminary Injunction (hereinafter IBT Opp.) (ECF 173) at 18-19.

None of the cases Defendants rely upon for that position applied the exemption to a truck driver. They simply acknowledged the exemption's existence and stated that a motor carrier or driver must meet the requirements of the exemption. *See People v. Superior Court of L.A. Cty.,* 57 Cal. App. 5th 619 (Cal. Ct. App. 2020), *rev. denied* (Feb. 24, 2021), *cert. denied*, 142 S. Ct. 76 (2021); *Parada v. East Coast Transp., Inc.*, 62 Cal. App. 5th 692, 702 n.4 (Cal. Ct. App. 2021); *W. State Trucking Ass'n v. Schoorl*, 377 F. Supp. 3d 1056, 1072 (E.D. Cal. 2019). In *People v. Superior Court*, for example, "Defendants offered no evidence demonstrating it would be impossible to meet the requirements of the business-to-business exemption." 57 Cal. App. 5th at 634.

Without a definitive court or state pronouncement, the motor carrier industry has no assurance of how the State will enforce AB-5 to permit or deny the use of the business-to-business exemption. Seeking this clarity was a significant factor for OOIDA's intervention in this case. On July 14, 2022, before it was granted intervention, OOIDA wrote to Governor Newsom requesting guidance about AB-5's impact on small business independent contractor drivers and motor carriers. The State has never provided OOIDA with that guidance. *See* Declaration of Todd Spencer in Support of OOIDA's Reply Brief, filed contemporaneously herewith as Exhibit 1, ¶ 12, and Exhibit A to Mr. Spencer's Declaration.

Moreover, Defendants do not consider the implications of relying on the business-to-business exemption. If Defendants are correct that independent contractors can qualify for the exemption, the Court must also consider federal law that governs motor carriers' relationships with independent contractors. These regulations require that the lease between carriers and drivers for the operation of the drivers' truck "shall . . . provide that the authorized carrier lessee shall assume

complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. § 376.12(c). The regulation requiring motor carriers' exclusive possession, control and use over independent contractor drivers was promulgated by the Interstate Commerce Commission in 1950 in response to the observations of the Bureau of Motor Carriers that motor carriers were not taking responsibility for the safe operation of the independent drivers they lease with. *See* Lease and Interchange of Vehicles by Motor Carriers, Ex Parte MC-43, 51 M.C.C. 461, 533 & 540 (June 26, 1950). Exhibit 2.

This federal regulation defeats two of the business-to-business exemption requirements: Section 2776(a)(1), which requires that the individual be free from control of the contracting business; and Section 2776(a)(8), which requires the independent contractor to advertise and hold itself out to the public as available to provide the same or similar service. An independent contractor whose vehicle is under exclusive use and control of a motor carrier in compliance with the Truth-in-Leasing rules cannot, by definition, be free from control of the motor carrier and, therefore, cannot hold itself out to the public and advertise its availability to perform that same service. Failing to meet any of the conditions set forth in Section 2776(a) forecloses application of the business-to-business exemption.

Because the federal regulations apply only to interstate truck operations, AB-5 has the effect of favoring intrastate California truckers and discriminating against truckers operating in interstate commerce. The Truth-in-Leasing rules apply to "motor carrier[s] providing transportation subject to jurisdiction under subchapter I of chapter 135 that uses motor vehicles not owned by it to transport property under an arrangement with another party." 49 U.S.C. § 14102. In turn, Subchapter I of chapter 135 governs "transportation by motor carrier . . . (1) between a place in—(A) a State and a place in another State"—essentially all motor carriers' movement in interstate commerce, including movement between a state and a reservation, territory, another state, or international jurisdiction. 49 U.S.C.

§ 13501. Therefore, if it is true that the business-to-business exemption to AB-5 permits independent contractor drivers to be a part of the trucking industry, then it is available *only* to California intrastate truckers and their carriers, who are not required to follow the Truth-in-Leasing rules. AB-5 thus discriminates against interstate truckers who *must* comply with the Truth-in-Leasing rules. This disparate treatment of intrastate versus interstate motor carriers is a *per se* violation of the dormant Commerce Clause.[1]

B. AB-5 imposes a *per se* violation of the Commerce Clause and imposes burdens on interstate commerce that clearly exceed the state's interest in applying AB-5 to the trucking industry.

The Commerce Clause restricts states' authority to regulate interstate commerce in two ways:

> First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face a virtually *per se* rule of invalidity. . . . State laws that regulate even-handedly to effectuate a legitimate local public interest will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2090-91 (2018) (quoting *Granholm v. Heald*, 544 U.S. 460, 476 (2005), and *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). AB-5 violates each of these independent standards.

OOIDA has demonstrated that AB-5 places destructive undue burdens on motor carriers and independent contractors operating in interstate commerce. Such burdens far outweigh the benefits that California enjoys by applying the law to the trucking industry. In particular, California receives *no* benefit from the application of AB-5 to motor carriers and drivers based outside of California. This violation of

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[1] This claim arises out of Defendants' Oppositions and case citations. Defendants' business-to-business arguments against the backdrop of the federal regulations brings the discrimination against interstate trucking into stark relief. Plaintiffs are compelled to assert this distinct constitutional violation.

the dormant Commerce Clause under the *Pike* balancing test is independent of and requires no showing of discrimination against interstate commerce.

1. AB-5's discrimination against interstate commerce is a *per se* dormant Commerce Clause violation.

"State laws that discriminate against interstate commerce face 'a virtually *per se* rule of invalidity.'" *Wayfair*, 138 S. Ct. at 2091 (quoting *Granholm,* 544 U.S. at 476). The positions staked out in both the State's and IBT's opposition demonstrate that AB-5 as applied to the trucking industry discriminates against interstate commerce and is, therefore, *per se* unconstitutional.

According to the State Defendants, "carriers can continue working with owner-operators, much as they do now, . . . by working with them as independent contractors pursuant to the business-to-business exemption." State Opp. (ECF 175) at 9-10; *see also* IBT Opp. (ECF 173) at 18-19 (asserting that "truck drivers *can* qualify for AB-5's business-to-business exemption"). If the State is correct that truck drivers can use the business-to-business exemption, then AB-5 baldly discriminates against interstate commerce, because that exemption conflicts with the mandatory provisions of motor carrier–independent contractor contracts mandated by federal law. *See supra* at Part II.A. Plaintiffs have plainly established with Defendants' admissions that AB-5 constitutes a *per se* violation of the Constitution.

2. *Pike* balancing does not require a showing of economic protectionism or discrimination.

Even without AB-5's blatant discrimination against interstate commerce, the Commerce Clause prohibits the imposition of state laws that "regulate even-handedly" but impose burdens on interstate commerce clearly excessive to local benefits. *See, e.g.*, *Wayfair*, 138 S. Ct. at 2091 (quoting *Pike*, 397 U.S. at 142). Defendants try to undermine this basic tenet of Commerce Clause jurisprudence using language from the Supreme Court's recent decision affirming the Ninth

Circuit in *National Pork Producers v. Ross*, 6 F.4th 1021 (9th Cir. 2021), *aff'd,* 143 S. Ct. 1142 (2023). Specifically, the State Defendants quote Justice Gorsuch's gloss on the various concurrences, arguing that *Pike* truly aims to "smoke out hidden protectionism" and implying that failing to demonstrate protectionism dooms burden (as opposed to discrimination) claims. State Opp. (ECF 175) at 8-9. But the entire Court rejected the idea that a plaintiff must demonstrate protectionism, hidden or otherwise, with a majority expressly saying so. *See id.* at 1158 (Gorsuch, J., plurality opinion) (acknowledging that the Court has invalidated "genuinely nondiscriminatory" state laws on burden grounds); 1166 (Sotomayor, J., concurring in part) (acknowledging same and noting that "petitioners' failure to allege discrimination or an impact on the instrumentalities of commerce does not doom their *Pike* claim"); 1168 (Roberts, J., concurring in part) (rejecting primary opinion's attempt to "narrowly typecast" *Pike* to exclude nondiscriminatory burden claims).

The Court has invalidated nondiscriminatory state laws a "small number" of times. State Opp. (ECF 175) at 9; *Nat'l Pork Producers*, 143 S. Ct. at 1158-59. In other words, the Court *has* determined on multiple occasions that state laws imposed an unconstitutional burden on interstate commerce, despite not being motivated by economic protectionism or favoritism. *Pike* balancing, therefore, does not require a showing of protectionism or discrimination, either in purpose or effect. That was true before *National Pork Producers* and it remains true today. *See* 143 S. Ct. 1168 (Roberts, C.J.) ("As a majority of the Court agrees, *Pike* extends beyond laws either concerning discrimination or governing interstate transportation."). The framework laid out in *Wayfair* and applied by the Ninth Circuit in *National Pork Producers*, applies today and controls the outcome here: "First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce." *Nat'l Pork Producers*, 6 F.4th at 1026 (quoting *Wayfair*, 138 S. Ct. at 2090).

The dormant Commerce Clause protects against all undue burdens on interstate commerce, whether they are shown to be protectionist or not. This Court must reject the State's attempt to strip citizens of constitutional protection critical to our national interstate economy.

3. Defendants do not address the significant burdens of AB-5 on independent contractor drivers in interstate commerce.

AB-5 imposes unconstitutional burdens not just on motor carriers but also on independent contractor drivers operating in interstate commerce. Defendants describe two ways that an individual can continue to be a truck driver under AB-5: become a motor carrier or become an employee driver, *see, e.g.,* State Opp. (ECF 175) at 9-10, two positions very different from being an independent contractor driver. These purported options reveal a misunderstanding or misrepresentation of the different roles and responsibilities of employee drivers, independent contractor drivers, and motor carriers.

In the trucking industry, creating and operating an independent contractor driver business is often a steppingstone between working as an employee driver and becoming a motor carrier. *See* Spencer Dec. (ECF 171-2) ¶ 32. Individuals with no experience in the business of trucking become employee drivers, *see id.* ¶¶ 20, 32, with primary responsibilities for safe driving, basic equipment safety, freight securement, and the pick-up and delivery of freight. *See* Spencer Declaration, attached as Exhibit 1 hereto, ¶ 17. Employee drivers have few responsibilities for running a trucking business.

OOIDA's declarants outlined the ways that employer motor carriers tightly control drivers' schedules and operations. *See generally* Declarations submitted with Plaintiff's Motion for Preliminary Injunction (ECF 171-2, 171-4 to 171-8). Defendants argue that such close control over drivers is not required by AB-5 and that AB-5 does not curtail driver flexibility. ECF 175 at 29-30; ECF 173 at 15-16. But this argument misses the mark. Imposing tight control and limiting flexibility is

how employer motor carriers treat their drivers. *See* Spencer Dec., Exhibit 1, ¶ 17; Spencer Dec. (ECF 122-3) ¶ 24. Employee drivers have little flexibility to make decisions. *See id*. Defendants suggest that an independent contractor can become an employee driver for a motor carrier and own and lease their truck to that motor carrier under a separate contract. *E.g.*, IBT Opp. (ECF 173) at 6. This "two-check" arrangement may work for some individuals, but it does not preserve the discretion and flexibility of the independent contractor business that a driver would have to sacrifice to become an employee driver. *See* Spencer Dec., Exhibit 1, ¶ 19.

AB-5's requirement that drivers be employees would force them into a job that is far different and less rewarding than that of an independent contractor driver. If an independent contractor driver must become an employee driver, they are giving up the dream they have pursued of running their own business with the flexibility to operate in the way that suits their lifestyle and makes them profitable. *See* Spencer Dec. (ECF 122-3) ¶¶ 19-23; Declarations in Support of Motion for Preliminary Injunction (Hemerson (ECF 171-4) ¶ 8-11, 16); (McElroy (ECF 171-5) ¶¶ 6, 13); (Williams (ECF 171-6) ¶¶ 7-10).

Additionally, experience as an employee driver is an introduction to the business of trucking, allowing an individual to take the step of purchasing a truck and starting an independent contractor small business, contracting with a motor carrier to operate under that carrier's DOT operating authority. Spencer Dec. (ECF 122-3) ¶¶ 14-20. Owner-operators assume more responsibility and risk than employees for the safe operation of their equipment in compliance with extensive safety regulations, and for running their business. But those increased responsibilities come with greater discretion in making choices when running their business. This discretion and flexibility give the driver greater opportunity for more compensation and reward. Spencer Declaration, Exhibit 1, ¶ 18. OOIDA's driver-declarants, as well as OOIDA's President Todd Spencer, testified that they can earn more as owner-operators than as employees. Hemerson Dec. (ECF 171-4) ¶ 9;

McElroy Dec. (ECF 171-5) ¶ 6; Williams Dec. (ECF 171-6) ¶¶ 6, 16; Spencer Dec. (ECF 171-2) ¶¶ 27-28, 30.

Independent contractor drivers also seek and appreciate flexibility as a lifestyle choice that better suits their personal needs. For example, an employee typically is allotted a certain amount of vacation time, sick leave, and the like. But as OOIDA's declarant Stacy Williams testified:

> My wife passed away on October 23, 2022. Because I am an owner-operator rather than an employee, I was able to take the necessary time off to bury my wife and settle her affairs without hauling loads for a sufficient time to weather this personal storm. I would not have had the discretion to take this time off had I been an employee driver.

Williams Dec. (ECF 171-6) ¶ 10. Owner-operators choose when and where they work and what loads they haul. Employees are instructed by motor carriers what to haul and where to haul it. *See* Spencer Dec. (ECF 122-3) ¶¶ 20-24.

Once an individual has operated successfully as an independent contractor for several years (8 to 10 years is the average), they have sufficient experience with the business of trucking to take on even more regulatory and business responsibility as a registered motor carrier. Spencer Dec., Exhibit 1, ¶ 21. Federal law requires that to become a motor carrier, a party must take on a host of responsibilities. *See, e.g.,* 49 U.S.C. § 13902 (registration of motor carriers); 49 U.S.C. § 13906 (public liability insurance); 49 C.F.R. Part 390 (motor carrier operating authority); 49 U.S.C. § 14505a (Unified Carrier Registration); 49 C.F.R. Part 368 (registered service of process in each state); 49 C.F.R. Part 382 (drug and alcohol testing); 49 C.F.R. § 385.403 (DOT Number for roadside identification).[2] Employee drivers and independent contractors without sufficient experience and an understanding of all of a motor carrier's expanded duties under the safety regulation cannot simply

[2] This is far from an exhaustive list. Several of these regulatory schemes require compliance with dozens of complicated provisions.

make the jump from owner-operator to motor carrier. Spencer Dec, Exhibit 1, ¶¶ 20-22.

Just becoming a motor carrier, as Defendants suggest as an option to comply with AB-5, is not feasible for all drivers. It is rare for employee drivers to jump to the position of motor carriers, because the trucking experience as an employee does not provide the training and education required to take on all a motor carrier's legal responsibilities and understanding of how the business works. *See* Spencer Dec., Exhibit 1, ¶¶ 20-21. Where Defendants discuss the number of drivers in California who have gotten their motor carrier authority, it is unlikely that they are referencing individuals who were misclassified as employees. Spencer Dec., Exhibit 1, ¶ 22.

For the reasons explained above, it is far more likely that Defendants are referring to true independent contractor drivers who would have the knowledge of the trucking industry and regulations necessary to become a motor carrier. *Id.* Defendants' argument that current independent contractor owner-operators can simply become motor carriers or employee drivers is one that would impose substantial sacrifices and burdens on independent contractor drivers while depriving them of their chosen career path.

Finally, the elimination of the independent contractor driver will have a significant impact on the interstate motor carrier industry. Doing away with the professional steppingstone of the independent contractor driver between employee driver and motor carrier cuts off the career pipeline of experienced and knowledgeable candidates to become motor carriers. The motor carrier industry and safety will suffer in the future when new motor carriers lack the level of experience and knowledge that individuals now operating independent contractor driver businesses have. *Id.* ¶ 23. The burdens imposed by AB-5 thus reach far beyond the stated goal of remedying misclassification and exploitation in the trucking industry. Instead, AB-5 "reclassifies" by design even true independent contractor drivers,

including many who are satisfied with their position as small business owners. *See, e.g.*, Hemerson Dec. ¶¶ 8-11; McElroy Dec. ¶ 13; Williams Dec. ¶¶ 7-10.

OOIDA has more than sufficiently demonstrated that AB-5 imposes unreasonable burdens and sacrifices on independent contractor drivers operating in interstate commerce.

4. Defendants ignore the significant burdens that AB-5 imposes on motor carriers operating in interstate commerce.

AB-5 burdens interstate motor carriers by forcing them to fundamentally change their business model to be able to use and manage employee drivers and assume all the responsibilities of an employer in California. Defendants argue that "the Commerce Clause does not protect a party's preferred business model or preferred 'methods of operation' in a given marketplace." State Opp. (ECF 175) at 10 (citing *Nat'l Pork Producers*, 143 S. Ct. at 1161 and *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127 (1978)). But, as the State has articulated in great detail to the public, hiring employees instead of independent contractors imposes tremendous burdens on motor carriers, including:

- Determining and paying minimum wage for hours worked;
- Determining and paying reimbursement for use of uniforms, tools, equipment;
- Creating and maintaining detailed pay statements;
- Determining tax withholding and maintain income tax records;
- Paying unemployment insurance payroll taxes; and
- Obtaining workers' compensation insurance.

See Employment Development Department, 2023 California Employer's Guide (DE 44) (January 2023), https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de44.pdf. Requiring carriers to use employee drivers rather than independent owner-operators, therefore, obligates carriers to expend substantial time and money.

Moreover, if Defendants' suggestion that AB-5's business-to-business exemption permits independent contractor drivers in the trucking industry, the burdens of AB-5 fall far more heavily on *interstate* motor carriers than on *intrastate* operations. AB-5's business-to-business exemption ensures that AB-5's harmful

effects burden all trucking companies operating in interstate commerce who haul any loads in California. Through the business-to-business exemption, AB-5 favors intrastate interests over their interstate counterparts by excluding independent contractor driver businesses operating in interstate commerce from California's roads but allowing the business-to-business exemption to intrastate independent contractor drivers. *See, e.g.*, State Opp. (ECF 175) at 10; *see also* IBT Opp. (ECF 173) at 19-20, *supra* Part II.A.

Furthermore, AB-5's burdens on motor carriers quickly exceed the potential gains from running loads in California for carriers based outside the state. *See, e.g.*, Schnautz Dec. (ECF 171-3) ¶¶ 9-11. The economies of scale to comply with AB-5 for a fleet of trucks doing business largely in California are much more favorable than for an out-of-state motor carrier whose business brings them into California less frequently. This is especially true for motor carriers who are neither based nor perform a majority of their work in California. The only alternative to bearing these burdens for motor carriers operating in interstate commerce is to sacrifice and refuse business that brings their drivers to California. According to Mr. Spencer and the driver-declarants, this option, not compliance with AB-5, has been their preferred option—clearly impacting interstate commerce.

Finally, Defendants suggest that motor carriers could treat their drivers as independent contractors outside of California, but then classify them as employees in compliance with California employment rules when they enter California. Defendants provide no evidence that any such operation exists in actual practice. In all his years in the industry, OOIDA's President has never heard of such a truck driving arrangement and believes it would create an administrative nightmare for motor carriers and truck drivers alike, and governments, including the State. *See* Spencer Declaration, Exhibit 1, ¶ 16. In Defendants' hypothetical scenario, would a motor carrier be required to switch their drivers' classification state to state? And in the different states that may require drivers to be an employee, would the motor

carrier be required to comply with each different set of employment laws? Will a driver be enrolled in one company's benefits plans for a single day and a different company's plans the next? Will a carrier issue individual W-2 and 1099 forms for every single trip a driver makes? When a driver like Stacy Williams hauls "water heaters out of Calexico, CA to destinations all over the country and into Canada," *see* ECF 171-6, will he stop being an employee driver when he crosses the California border, and will every state he passes through expect a portion of his earnings in taxes because he earned the money within its borders? Defendants did not contemplate or acknowledge these excessive burdens that would accompany their suggestions for compliance with AB-5.

5. Defendants offer no evidence of how California could benefit from AB- 5's application to interstate commerce, particularly to out-of-state truckers.

Finally, the state makes no argument as to how it benefits from imposing AB-5 on interstate commerce and interstate independent contractor drivers. OOIDA specifically argues that California derives no putative benefit from enforcing AB-5 against independent contractor drivers based outside of California who spend less than 50% of their work time in California and driving for motor carriers based outside of California. Defendants concede that OOIDA's argument might be correct, noting that "it is not even clear whether AB-5 applies to such out-of-state workers." IBT Opp. (ECF 173) at 23. Defendants have submitted absolutely no evidence of any putative benefits to the State for the purposes of the *Pike* analysis in the trucking context. The injury to out-of-state motor carriers and independent contractor drivers, losing their small businesses and having to bear the cost and burdens of changing their work model to haul freight to or from California, clearly exceed the minimal—at best—benefit to the State.

Defendants erect a strawman in response to OOIDA's use of *Ward v. United Airlines, Inc.*, 986 F.3d 1234 (9th Cir. 2021) and *Oman v. Delta Air Lines*, Inc., 9 Cal. 5th 762, 466 P.3d 325 (2020), *cert. denied*, 142 S. Ct. 755 (2022), to illustrate

the state's reduced or non-existent interest in enforcing its employment laws against out-of-state motor carriers and drivers. Defendants mischaracterize the argument and claim that OOIDA must, but did not, make a complete choice-of-law analysis on each applicable employment rule in California. But OOIDA raised the *Ward* and *Oman* cases to inform the *Pike* analysis, demonstrating that California has a diminished, perhaps even non-existent, interest in enforcing its employment laws on drivers based outside of the state who spend less than 50% of their work time in California or against their motor carriers. Moreover, Defendants' decision to avoid confronting that caselaw head-on leaves the Court with no evidence supporting a finding under *Pike* that California would derive sufficient (if any) benefit from enforcing AB-5 against out-of-state truckers compared to the burden on those truckers.

OOIDA has shown that the burdens of AB-5 on truck drivers and motor carriers operating in interstate commerce clearly exceed any interest or benefit the state derives from applying AB-5 to independent contractor drivers, particularly those from outside of California who perform less than 50% of their work in California. *See* ECF 171 at 8-15; *see also supra* Part II.B.2-4. OOIDA should prevail on its *Pike* burden claim.

C. AB-5 violates Equal Protection because it allows exemptions for certain segments of the trucking industry that contradict the law's purposes, and the law is based solely on animus toward the independent contractor driver model.

AB-5 exempts from its scope the construction trucking industry and other driving industries but includes within its grasp the general motor carrier industry. This distinction lacks any rational basis. Instead, it contradicts the law's claimed purpose and was driven by the legislature's animus against the independent driver business model. Nothing raised in Defendants' opposition briefs refutes this basic premise, and yet, Defendants' reliance on the business-to-business exception

highlights yet another contradictory and irrational element of the law.[3] For example, if the business-to-business exemption applied to independent contractor drivers, then why would the construction exemption be necessary at all?

1. AB-5 undermines its stated purpose, as highlighted by Defendants' business-to-business exemption arguments.

Olson instructs that a legal distinction motivated by a lawmaker's "disfavor" of a business model, which undermines the purposes of the challenged law, shows an irrational basis for Equal Protection purposes. *Olson v. California*, 62 F.4th 1206, 1219 (9th Cir. 2023). The Ninth Circuit there held that excluding thousands of gig workers was "starkly inconsistent" with AB-5's stated purpose of fighting worker exploitation through misclassification and providing workers "the basic rights and protections they deserve." *Id.* This disconnect meant that the disparate treatment lacked a rational basis, opening the door for an Equal Protection claim.

Likewise, the "architect" of AB-5 here, *see Olson*, 62 F.4th at 1219, sought to eliminate the independent owner-operator business model. *See* ECF 167 at 6-8. Eliminating an entire class of independent contractors—including workers who are *properly* and *voluntarily* independent contractors—works against AB-5's stated purpose of remedying *misclassification* and/or *exploitation of* workers. Under *Olson*, this contradiction demonstrates an absence of a rational basis.

AB-5's contradictions do not stop there. The law claims a purpose of addressing misclassification and exploitation of workers in California. Yet following Defendants' arguments to their logical conclusion means that a key component—the business-to-business exemption—directly undermines that aim. Defendants assert that drivers can continue to work as independent contractors through AB-5's business-to-business exemption. *See* State Opp. (ECF 175) at 45-5,

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[3] Should the Court enjoin the law's enforcement, or strike it down altogether, the exemption for drivers in the construction industry would be rendered superfluous.

10; IBT Opp. (ECF 173) at 29, 39, 50. But that exemption as applied to the trucking industry can only ever be used by *intrastate* truckers.

Federal leasing rules applicable to independent operators leased to interstate motor carriers preclude a carrier and driver from satisfying the elements of the business-to-business exemption. *See supra* Part II.A. Those rules do not apply to wholly *intrastate* operations. Thus, local companies and workers are the only trucking operations that could potentially satisfy the exemption and avoid classification as employees under the ABC test, which does not allow for independent contractor drivers. In other words, under the business-to-business exemption, the only independent contractor drivers in the industry who could fall outside the scope of AB-5 are California intrastate drivers, the very individuals whose misclassification the Defendants claims to address with AB-5. On its face, AB-5 works against its stated purpose of remedying misclassification of California workers. This contradiction in the law's purpose and scope constitutes an irrational basis for Equal Protection purposes. *See, e.g.*, *Olson*, 62 F.4th at 1219 (recognizing Equal Protection claim where law's terms were "starkly inconsistent" with its claimed purpose).

2. Defendants have not refuted OOIDA's demonstration of former Assemblywoman Gonzalez's animus against the independent trucker model.

As in *Olson*, OOIDA has clearly demonstrated that former Assemblywoman Gonzalez held a particular animus against independent truckers, even when they are properly classified as independent contractors. Indeed, AB-5's "architect" intended the law to completely abolish the owner-operator model. *See, e.g.*, video record of Assembly Floor Session, at 1:07:20-1:08:30 (Sept. 11, 2019) (https://www.assembly.ca.gov/media/assembly-floor-session-20190911) (distinguishing between "legitimate small business"—referring to truck owners operating under their own authority, which renders them not drivers but motor carriers—and an "illegal business model"—referring to those who own or lease

trucks and contract with motor carriers, *i.e.*, owner-operators). In addition to the evidence of animus presented by Plaintiff, Defendants' own arguments demonstrate the law's true purpose.

- Both the State and IBT Defendants take great pains to describe ways for a driver to work in compliance with AB-5. *See, e.g.,* State Opp. (ECF 175) at 9-10, IBT Opp. (ECF 173) at 17-18. All the various ways of complying require operators to up-end their businesses and become motor carriers or work as employees. None permits owner-operators to work as independent contractors.
- AB-5 eliminates the independent contractor driver—it does not establish a test to root out misclassification, a goal the law purports to serve.
- The State describes owner-operators as being able to become "legitimate small business" or employees of larger businesses and that it is getting rid of "an outdated brokers model." State Opp. (ECF 175) at 22 n.15. This demonstrates clear animus against independent truckers: countless owner-operators are "legitimate businesses" who do not wish to operate under a different model.

Defendants themselves demonstrate that AB-5 (and specifically its Prong B) has the effect of eliminating owner-operators who drive as independent contractors in interstate commerce. This result corresponds to Assemblywoman Gonzalez's animus: she wanted truck drivers to be employees, regardless of whether they were previously misclassified. But as the cases the State cites show, the previous classification test proved very effective in combatting trucker misclassification. ECF 175 at 3 (citing *Garcia v. Seacon Logix, Inc*., 238 Cal. App. 4th 1476, 1488 (Cal. Ct. App. 2015); *Ruiz v. Affinity Logistics Corp*., 754 F.3d 1093, 1101-05 (9th Cir. 2014); *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 988-997 (9th Cir. 2014)). And a more expansive second prong would give bona fide independent truckers the opportunity to continue their desired businesses. *See Bedoya v. Am. Eagle Express Inc*., 914 F.3d 812, 824 (3d Cir.2019), *cert. denied,* 140 S. Ct. 102 (2019) (noting that New Jersey "course of business" prong, which provides a path to independent contractor status where the worker's service "is performed outside of all the places of business of the enterprise for which such service is performed," N.J. Stat. 43:21-19(i)(6)(B), "does not bind [the employer] to

a particular method of providing services"). AB-5, on the other hand, was written with the express intention to eliminate non-employee owner-operators, regardless of the actual nature of the working relationship and even in the absence of the misclassification and exploitation purportedly at AB-5's core.

3. Plaintiffs request appropriate Equal Protection relief.

The State Defendants argue that OOIDA ignored the appropriate remediation for an equal protection violation, *i.e.*, to remove the disparity between the classes, "to 'level up' or 'level down,'" and that it would be impossible to force construction truckers to ramp up compliance for a single year. ECF 175 at 21. In fact, OOIDA did propose leveling the playing field, by allowing all owner-operators to be exempt from AB-5. But the State Defendants have made clear, as the declaration of Michael Belzer (submitted by IBT but cited by the State) clearly lays out, their intention is to eliminate the owner-operator model from the trucking industry altogether. ECF 173-1 ¶¶ 26-36, 39.

The State acknowledges that AB-5 allows for "limited statutory exemptions to the ABC test for certain occupations and industries, where the Legislature determined the ABC test was not a good fit." ECF 175 at 4. If ever an exemption should apply because the ABC test is not a good fit, one should be granted to owner-operators. Instead, California wants to eliminate those drivers' businesses. A finding that the application of AB-5 to the trucking industry violates the Constitution and the grant of a permanent injunction against its application to the trucking industry would be the appropriate remedy.

III. CONCLUSION

Defendants' responses help strengthen OOIDA's arguments that AB-5 violates the U.S. Constitution's Commerce Clause for discriminating in favor of California truck drivers and for imposing undue burdens on out of state drivers that exceed the state's minimal interest in seeing the law enforced against them. The Legislature had no rational basis to treat independent contractor drivers for the

construction industry differently from other truckers, independent contractor driver businesses from independent contractors for other business given exemptions to AB-5, and intrastate truckers differently from interstate truckers for purposes of the business-to-business exception. Finally, the Legislature had no rational basis to give the focus of the law, California workers, an exemption from AB-5, but deny the same exemption to out of state workers operating in interstate commerce. Accordingly, OOIDA asks the Court to enjoin the State preliminarily, and permanently, from enforcing AB-5 against interstate truckers, or at least those drivers who are based outside of California and spend less than 50% of their time in the state.

Dated: July 21, 2023

Respectfully submitted,

The Law Office of Timothy A. Horton
By: /s/ Timothy A. Horton
Timothy A. Horton

Local counsel for Intervenor-Plaintiff Owner-Operator Independent Drivers Association

Paul D. Cullen, Jr. (pro hac vice)
Charles R. Stinson (pro hac vice)

Attorneys for Intervenor-Plaintiffs Owner-Operator Independent Drivers Association

INDEX OF EXHIBITS

(S.D. Cal. Civ. LR 5.1(e))

INTERVENOR-PLAINTIFF OOIDA REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT 1

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Attorneys for Intervenor-Plaintiff
Owner-Operator Independent Drivers Association

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION *et al.*

Plaintiffs,

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION,

Intervenor- Plaintiff,

v.

ATTORNEY GENERAL ROB BONTA, *et al.*

Defendants.

Case No. 3:18-CV-02458-BEN-DEB

DECLARATION OF TODD SPENCER IN SUPPORT OF REPLY BRIEF

Judge: Hon. Roger T. Benitez
Date: August 28, 2023
Time: 10:30 a.m.
Courtroom: 5A

I, Todd Spencer, do hereby declare:

1. The facts set forth herein are of my own personal knowledge, and if called to testify thereto, I could and would do so under oath.

2. I am the President of the Owner-Operator Independent Drivers Association, Inc. ("OOIDA"). I have held this position since 2018.

3. I have been in the trucking industry since 1974 and have worked as an independent owner-operator.

4. I have held an executive position in OOIDA, advocating for the rights of truck drivers, since 1981.

5. OOIDA is a not-for-profit trade association representing the interests of independent owner-operators, small-business motor carriers, and professional drivers.

6. OOIDA was founded in 1973 and today has more than 150,000 members based in all fifty states and Canada.

7. OOIDA members collectively own and operate more than 200,000 individual heavy-duty trucks.

8. The overwhelming majority of OOIDA's members are part of the interstate motor carrier industry.

9. OOIDA's membership consists of both independent owner-operator truck drivers and small business motor carriers.

10. Small businesses represent nearly half of the total active motor carriers in the United States.

11. Independent owner-operator truck drivers who spend at least some time operating in California are the parties whose employment status is at issue under the AB-5 test.

12. On July 14, 2022, I sent a letter on behalf of OOIDA to Governor Newsom, seeking guidance as to how the State of California would interpret and enforce AB-5 against the trucking industry. A copy of OOIDA's letter is attached to this Declaration as Exhibit A. Although the State invited us to attend two webinars on the enforcement of AB-5, and the State (via email) indicated a desire to meet with OOIDA, none of my questions were answered and no such meeting

ever occurred. Thus, despite its efforts to understand the State's intentions, we have received no guidance about how the State intends to apply and enforce AB-5 in the trucking industry, particularly the business-to-business exception.

13. Defendants' responses to OOIDA's Motion for Preliminary Injunction serve only to deepen our concerns that, because of the federal Truth-in-Leasing laws and regulations, independent contractor drivers operating in interstate commerce are unable to avail themselves of the business-to-business exemption in AB-5, since the federal truth in leasing laws and AB-5's business-to-business exemption appear to be in direct conflict.

14. Independent contractor drivers who operate in interstate commerce, including those who are neither based in California nor perform a majority of their work in California, will be required to (1) give up their independent contractor driving business or become a motor carrier so that they comply with AB-5 when they cross into California; or (2) stop accepting business (freight) taking them into California.

15. Defendants suggest that drivers could be independent contractors outside of California, but then switch to employee status for the period of time they spend in California. I have never heard of such a truck driving arrangement and believe it would be unduly complicated and burdensome for both the driver and the motor carrier to manage.

16. The State Defendants suggest that truck drivers could be hired by motor carriers as temporary employees. I do not know of such an arrangement today and cannot imagine how it would work as a practical matter. Such an arrangement is likely to create administrative nightmare for motor carriers and truck drivers alike, and even for governmental entities.

17. Employee drivers have little if any control of the work they do. They are employed by a motor carrier and given the primary responsibilities of safe driving, basic safety of the equipment they use, securing freight, and for the pick-

up and delivery of freight. These drivers are not responsible for operating the businesses they work for. They are subject to tight control by their employers and have little if any flexibility in doing their jobs.

18. Owner-operators assume more responsibility and risk than employees for the safe operation of their equipment in compliance with the safety regulations and for running their business. But those increased responsibilities come with greater discretion and flexibility in making choices when running their business. This discretion and flexibility give the driver greater opportunity for more compensation and reward than available to employee drivers. This is a significant reason that drivers choose to create a business as an independent contractor driver and do not want to give up this business to comply with AB-5.

19. The "two-check" arrangement described by Dr. Belzer and Defendants would allow a driver to use their own truck. However, as employee drivers, they would be forced to give up the discretion and flexibility of the independent contractor.

20. It is unusual for an employee driver to go straight to being a motor carrier with their own authority, because the trucking industry experience of an employee does not reliably provide the training and education required to take on all a motor carrier's legal responsibilities and understanding of how the business works.

21. Once an individual has operated successfully as an independent contractor for several years (8 to 10 years is the average), they have sufficient experience with the business of trucking to take on even more regulatory and business responsibility as a motor carrier with federal operating authority.

22. Defendants discuss an increase in the number of drivers in California who have gotten their motor carrier authority. It is unlikely that this increase reflects individuals who were misclassified as employees. For the reasons explained above, it is far likelier that Defendants are referring to true independent

contractor drivers who would have the knowledge of the trucking industry and regulations necessary to become a motor carrier.

23. Eliminating independent contractor drivers' businesses will have a significant negative impact on the interstate motor carrier industry. Doing away with the professional steppingstone of independent contractor driver between employee driver and motor carrier cuts off the stream of experienced and knowledgeable candidates to become motor carriers. The motor carrier industry and safety will suffer in the future when new motor carriers lack the level of experience and knowledge of individuals now operating independent contractor driver businesses.

Executed this 21st day of July 2023, at Grain Valley, Missouri.

Todd Spencer
President, OOIDA

EXHIBIT A

Owner-Operator Independent Drivers Association

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Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20003
Tel: (202) 347-2007 Fax: (202) 347-2008

July 14, 2022

The Honorable Gavin Newsom
Governor
State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Dear Governor Newsom:

The Owner-Operator Independent Drivers Association (OOIDA) is the nation's largest trade association representing owner-operators leased to motor carriers, small-business motor carriers with their own operating authority, and employee truck drivers. Therefore, we are in a unique position to offer an important perspective on classification issues within the trucking industry. We have more than 150,000 members nationwide, including nearly 6,500 who reside in California and thousands more who regularly operate on California roadways.

Now that the United States Supreme Court has declined to hear a legal challenge against AB 5 involving the trucking industry (California Trucking Association v. Bonta), our members face tremendous uncertainty. We are writing to request that California refrain from enforcing the law until the State clearly communicates how owner-operators can continue to operate as independent contractors. If the law does indeed outlaw the independent contractor model for owner-operator truckers, we also request that the state makes accommodations to ensure truly independent owner-operators can continue operating as independent contractors.

While enforcement of AB 5 will create disruptions and challenges for the supply chain and economy in California and across the country, small-business truckers face the most immediate uncertainty and potential harm. Our members who live in the state, as well as tens of thousands of truckers who travel through it, are now wondering if they can continue working in the same arrangements they have for years – arrangements which benefit their operations. For some, this means they don't know whether they will be able to make their next truck or mortgage payment. California must prioritize these drivers' perspectives as it considers its way forward.

Our association represents both owner-operators and employees, and so we want to support policies that enable drivers to operate their own business while protecting against abuse from carriers. There is certainly misclassification in trucking, but the ABC Test is far too broad to account for the specifics of the trucking industry. And as evidenced by the various exemptions

included in AB 5 and subsequent amendments to law, the test clearly doesn't work for many other industries either.

We recognize misclassification is a real issue in trucking, especially with lease-purchase schemes that have been prevalent in California ports (and trucking in general) for decades. We believe there are ways to address these cases without outlawing working arrangements that allow truckers to operate as an independent business.

Prong B of the ABC test is especially problematic for owner-operators working with carriers through a lease agreement because the individual is performing work in the usual course of the hiring entity's business. In these agreements, a trucker who owns or leases their equipment enters into a contract with a motor carrier for the purpose of leasing and operating their equipment. These practices have been in place for well over 40 years, far predating recent discussions around worker classification and the "gig economy," and have enabled leased owner-operators to work with motor carriers as independent contractors. Up to today, the mere fact an owner-operator worked in the same "course of business" as a motor carrier has not been determinative of their worker classification status.

California has disregarded the extensive history of the leased owner-operator model and the comprehensive regulations and practices that have allowed truckers to operate as true independent contractors. To take just one example, there are federal regulations, known as Truth-in-Leasing (TIL) Regulations (49 CFR § 376.12), that dictate specific requirements for these leases that help protect truckers and the public. One requirement is the "lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease." In other words, a motor carrier retains exclusive possession of an owner-operator's equipment while their lease is in effect. This federal requirement alone makes it difficult for us to see how a leased owner-operator can continue working as an independent contractor under AB 5, whether by satisfying the ABC test or AB 5's business-to-business exemption.

With this in mind, we are asking you to announce a delay in enforcement of AB 5 in the trucking industry until the state fully considers how the law will affect small-business truckers, and provides remedies to ensure true independent contractors are not forced to be reclassified as employees. We would like answers to the following questions:

1. Will AB 5 have any impact on owner-operators with their own operating authority (i.e. owner-operators with their own U.S. DOT number)? For the record, we would argue owner-operators with their own authority are outside the reach of AB 5.

2. Will AB 5 effectively prohibit all traditional lease agreements between owner-operators and motor carriers?

3. Does the state believe owner-operators leased to a carrier would be able to satisfy the business-to-business provision so they are governed by the Borello standard?

4. Will AB 5 apply to owner-operators who are residents of California but are leased to a motor carrier domiciled in another state?

5. Will AB 5 apply to an owner-operator who is a resident of another state but who is leased to a carrier domiciled in California?

6. Will AB 5 apply to drivers that only pass through California, but do not begin or end a trip there?

7. Some owner-operators are leased to a motor carrier but own more than one truck. The owner-operator (i.e. truck owner) might hire their own employees to operate their other truck and pay applicable payroll taxes, employee benefits, etc. In essence, a motor carrier has a lease agreement with an owner-operator (truck owner), but the owner-operator supplies their own employees to drive the truck. Will AB 5 allow or prohibit an operation like this?

8. Does (or will) California have a website or phone number available for anyone potentially impacted by the new law to ask questions and receive timely answers?

One of the biggest failures of AB 5, with both the ABC Test and the law's business-to-business exemption, is that it is an all or nothing approach – if an individual fails to satisfy even one criteria, they are automatically an employee. The fact an individual performs work that is in the usual course of the hiring entity's work may have some bearing over whether the individual is an employee or independent contractor, but there is no way it can be *the* determining factor. We hope you will provide accommodations to allow for owner-operators to continue working as independent contractors, as the State already has for independent contractors in other industries. We would welcome the opportunity to share our expertise and feedback on policies that will benefit and protect drivers, both those who are independent contractors and who may be misclassified.

Sincerely,

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.

EXHIBIT 2

EX PARTE NO. MC-43

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Submitted June 26, 1950. Decided June 26, 1950

Upon investigation, rules and regulations to be observed by motor common and contract carriers of property subject to part II of the Interstate Commerce Act, governing the practices of such carriers in the leasing and interchange of motor-vehicle equipment, prescribed.

John M. Allison, *David Axelrod*, *Anthony F. Arpair*, *David Brodsky*, *H. J. Bischoff*, *Harry E. Boot*, *Joseph H. Blackshear*, *B. M. Brunson, Jr.*, *Francis E. Barrett*, *J. Ninian Beall*, *G. M. Brewer*, *Herbert Burstein*, *Albert F. Beasley*, *Walter L. Baumgartner*, *Robert W. Brunow*, *Arthur P. Boynton*, *Bert Collins*, *Daniel J. Crecca*, *Thomas F. Chawke*, *Albert J. Carr*, *Clarence F. Carey*, *William O. Compton*, *Eugene L. Cohn*, *Bernard G. Cohn*, *L. V. Copley*, *Russell B. Curnett*, *Ralph E. Curtis*, *Dale C. Dillon*, *G. H. Dilla*, *O. R. Davis*, *George S. Dixon*, *Milton E. Diehl*, *E. J. Damon*, *Charles T. Dodrill*, *Robert DeKroyft*, *S. S. Eisen*, *Howell Ellis*, *F. H. Floyd*, *Kenneth G. Foster*, *Lloyd R. Guerra*, *Noel F. George*, *Earl L. Girard*, *Vic J. Grice*, *Jack Goodman*, *Louis Hobman*, *A. B. Harper*, *Harold G. Hernly*, *Sylvester C. Horn*, *Edgar S. Idol*, *Charles D. Johnson*, *Marion F. Jones*, *Chester E. King*, *C. V. Kretsinger*, *Joseph A. Kline*, *S. Harrison Kahn*, *Reuben Kaminsky*, *R. H. Keas*, *J. Almyk Lieberman*, *B. W. LaTourette*, *David G. MacDonald*, *R. J. McBride*, *James A. McDowall*, *C. R. Morrow*, *E. G. Minor*, *Alexander Markowitz*, *F. L. McKee*, *Victor Neumark*, *C. R. Olson*, *Walter Peterson*, *Charles Pieroni*, *Albert B. Rosenbaum*, *Carl Ruroede, Jr.*, *Floyd F. Shields*, *Harold S. Shertz*, *Truman A. Stockton, Jr.*, *Louis E. Smith*, *Wallace L. Schubert*, *Mortimer Allen Sullivan*, *C. Austin Sutherland*, *Jack Garrett Scott*, *Clarence D. Todd, Jr.*, *Jack R. Turney, Jr.*, *John R. Turney*, *James W. Wrape*, *J. C. Weaver*, *H. J. Waples*, and *Nathan E. Zelby* for respondent motor carriers and various associations and conferences of motor carriers.

Leo H. Pou, *Gerald E. Jessup*, and *Nell Guinn* for Bureau of Motor Carriers, Interstate Commerce Commission.

Samuel Bryan for Public Service Commission of Wisconsin, *E. T. Hamill* and *Lewis Petteway* for Florida Railroad and Public Utilities Commission, *Charles W. Haas* for Nebraska State Railway Commission, *Wallace G. Kittredge* for Massachusetts Department of Public Utilities, *Smith Troy*, *Frederick J. Lordan*, *George R. LaBissoniere*, and *William A. Stancer* for Department of Transportation, State of Washington, *Charles R. Reilly* for Rhode Island Public Utility Administrator, *John L. Van Dervoort* for Ohio Public Utilities Commission, *Frank Libby* for Maine Public Utilities Commission, and *E. A. Wilcox* for Iowa State Commerce Commission.

William J. Hickey for United States Department of Justice.

Chas. B. Bowling, *Donald C. Leavens*, *Carl R. Bulloch*, and *Henry A. Cockrum* for United States Department of Agriculture.

R. E. Brown, *J. P. Canney*, *Charles Clark*, *Y. D. Lott*, *W. A. Northcutt*, *W. A. Rena*, *Noah Walker*, *Jr.*, *E. F. Barnes*, *Jr.*, *Robert D. Brooks*, *James G. Blaine*, *W. H. Fitzpatrick*, *A R. Eldred*, *William J. O'Brien*, *Jr.*, *Joseph H. Wright*, *James W. Nisbet*, *George W. Holmes*, *Emil J. Mueller*, *R. C. Volkert*, *Richard Musenbrock*, *Clarence Raymond*, *P. F. Gault*, *Lucian Cocke*, *Jr.*, *Anthony P. Conadio*, *R. V. Fletcher*, *Jr.*, *J. W. Grady*, *E. J Harrington*, *Carl Helmetag*, *Jr*, *Allen Lesley*, and *R. T. Wilson*, *Jr.*, for railroads and associations of railroads.

William H. Marx for Railway Express Agency, Inc.

William H. Atack, *William A. Quinlan*, *E. H. Stack*, *John B. Keeler*, *Albert A. Matson*, *C. H. Beard*, *Raymond E. Steel*, *Ross S. Carey*, *Maurice F. Crass*, *Jr.*, *Samuel Fraser*, *Durward Seals*, *Frank Taylor*, *Art Clark*, *John R. Van Arnum*, *Carleton Ellis*, *Jr.*, *Francis T. Tighe*, *Kenneth J. McAuliffe*, *F. B. Hufnagel*, *Jr.*, *Jack B. Josselson*, *Harry F. Suiter*, *S. W. Earnshaw*, *H. Scott Byerly*, *E. F. Lacey*, *A. J. Uhlenbrock*, *A. H. Schwietert*, *W. H. Ott*, *W. Gordon Leith*, *Warren H. Wagner*, *M. W. Wells*, *Robert N. Burchmore*, *L. O. Kimberly*, *Jr.*, *Harry R. Brashear*, *E. E. Kindtz*, *J. T. Schatt*, *R. H. Heinecamp*, *H. D. Driscoll*, *T. W. Mackey*, *L. V. Copley*, *F. L. Ruland*, *A. H. Franke*, *H. Russell Bishop*, *L. Z. Whitbeck*, *I. F. Lyons*, *Nuel D. Belnap*, *A. D. Whittemore*, *L. F. Orr*, *John S. Burchmore*, *Chas. J. Fagg*, and *Gordon Stedman* for shippers, organizations representing shippers, lessors of motor-vehicle equipment and others.

Burton K. Wheeler, *Edward K. Wheeler*, *Robert G. Seaks*, and *J. Albert Woll* for a labor organization.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

Exceptions to the proposed report of the examiner were filed by certain of the respondents, and by carrier organizations representing other respondents, by shippers and shipper organizations, a private carrier organization, the Railway Express Agency, Inc., the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, the Bureau of Motor Carriers, Interstate Commerce Commission, hereinafter called the Bureau, and others; and many of the parties replied. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified. Our conclusions differ somewhat from those recommended by the examiner.

This proceeding is an investigation on our own motion, under part II of the Interstate Commerce Act, respecting the lawfulness of the practices of motor common and contract carriers of property in interstate or foreign commerce, throughout the United States, in the leasing and interchange of vehicles. All such carriers were made respondents. The scope of the proceeding can best be indicated by repeating the stated objectives in the order, which were to determine (1) whether any or all of the present practices of the said carriers, with respect to the performance of transportation by the use of vehicles owned by others, the interchange of vehicles, and the leasing of vehicles to private carriers and shippers, should be required to be discontinued because unlawful or contrary to the public interest; and, if any or all of the present practices are to be continued; (2) whether (*a*) the renting of vehicles by or to motor common and contract carriers, with or without drivers, should be limited to long-term leases; (*b*) the use of leased vehicles by motor common and contract carriers should be limited to a fixed percentage of the number of vehicles to which the using motor carrier holds title; and (*c*) the motor carriers' practices should be governed by the rules and regulations set forth in tentative form in the attached appendix [1] or such other rules and regulations as may be found to be reasonable; and to take such other action in the premises as the facts and circumstances shall appear to warrant.

The American Trucking Associations, Inc., hereinafter called A. T. A., its Household Goods, and Contract Carriers Conferences,

[1] The tentative rules referred to are not reproduced in this report.

others of its constituent conferences, the regulatory bodies of Florida, Washington, Wisconsin, Massachusetts, Nebraska, Rhode Island, Ohio, Maine, and Iowa, numerous associations of various types of motor carriers, both common and contract, several railroads, the Railway Express Agency, Inc., numerous individual carriers and shippers, owners and operators of vehicles under lease to carriers, traffic associations, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, the Bureau, and others participated in the hearing; and many of the parties adduced evidence. A number of parties, upon a proper showing, were authorized to intervene subsequent to the hearing.

This proceeding grows out of a practice which antedates the Motor Carrier Act, 1935, now part II of the Interstate Commerce Act, and is perhaps more prevalent in the motor-carrier industry than in any other field of transportation, namely, the use of nonowned vehicles by those holding authority as carriers in their authorized operations. To a large extent the ownership in such cases is vested in individuals who either drive the vehicles, or employ others to drive them. These lessors of motor-carrier vehicles are generally known, and will be referred to herein, as owner-operators. Many of them are engaged in transporting commodities specified in section 203 (b) (6) of the act, and are sometimes described as exempt commodity haulers.

Use is made of nonowned vehicles by the authorized carriers under a great variety of arrangements, ranging from loose, informal oral agreements, made over the telephone, or on the spot, between an authorized carrier or someone on its behalf, and the owner of the vehicle, in many instances for a single-haul or round-trip movement, to written instruments applying for definite periods, and meeting the essential requirements of valid, bilateral contracts between the parties. The single-haul arrangement is generally referred to as a trip lease. All of these arrangements are embraced in the term "leasing" as herein employed, including those between authorized carriers. There is considerable leasing between the carriers, and by the carriers from others engaged entirely in renting and maintaining motor-vehicle equipment. The record, however, contains little evidence as to the activities of such lessors.

The term "interchange" as used herein, means the physical exchange of equipment, generally trailers, between authorized carriers, at a point both are authorized to serve, usually in furtherance of a through movement of freight over the lines of the two carriers. In some instances completely loaded trailers are interchanged; in other instances, a loaded trailer is tendered by one of the two carriers in exchange

for an empty vehicle to be used by the first carrier, while the second is completing the through movement. In some parts of the country straight trucks are interchanged. In interchange, of course, each carrier has authority covering the portion of the haul it performs. Very little of the evidence herein deals with this subject. The attention of the parties was devoted primarily to the influence on the motor-carrier industry of the individual who owns and drives his vehicle, and the use made of him. Many of these are referred to as "gypsies" or "itinerant truckers." These will serve any carrier with whom they can make favorable trip-lease arrangements, provided they can obtain truckloads of heavy loading freight. They are not interested in hauling less-than-truckload shipments because of the time consumed and the additional expense incurred in loading and unloading such shipments.

The leasing practices of the carriers have created problems from the inception of regulation, particularly in determining the parties entitled to certificates and permits under the "grandfather" clauses of the act. Early in its administration, in 1937, in the absence of any formal decision, the Bureau issued its administrative ruling No. 4, which provided, in effect, that an authorized motor carrier could use a vehicle which it did not own only if it assumed exclusive possession and control thereof, and if the vehicle was driven by one of its employees. In a few early cases operating authorities were issued to applicants whose practices apparently met these requirements. Thereafter, down to a recent date the Commission and the courts have considered many aspects of the question of motor-carrier operations conducted in vehicles not owned by the carriers, and have determined the conditions upon which certificates or permits under the "grandfather" clauses of the act could be granted, based on such operations. General principles were derived from these proceedings which have been applied in others. Among the important precedent proceedings are: *Acme Fast Freight, Inc., Common Carrier Application*, 8 M. C. C. 211; *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735; *Boston & Maine Transp. Co. Common Carrier Application*, 34 M. C. C. 599; *Thomson* v. *United States*, 321 U. S. 19; *Railway Exp. Agency, Inc., Extension—Waggoner, Ill.*, 44 M. C. C. 1, 44 M. C. C. 771; *Allied Van Lines, Inc., Common Carrier Application*, 46 M. C. C. 159. Most of the important holdings in prior reports were reviewed in the case last cited, and there is a further review of the late precedents, particularly the *Thomson* case in *Performance of Motor Com. Car. Service by Riss & Co., Inc.*, 48 M. C. C. 327. In respect of authority under the "grandfather" clauses, in an operation based on

nonowned vehicles, the holding out of a single transportation service has been held not to give rise to multiple operating rights. *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50.

As a result of the foregoing proceedings there has been considerable evolution in the concept of the extent of control over nonowned vehicles necessary on the part of one seeking thereby to conduct operations as a motor carrier under part II of the act. Administrative ruling No. 4 no longer reflects the law, as interpreted by the Commission and the courts. Possibly subject to some qualifications, it may be stated that when a certificate or permit holder furnishes service in vehicles owned and operated by others, he must control the service, to the same extent as if he owned the vehicles, but need control the vehicles only to the extent necessary to be responsible to the shipper, the public, and the Commission for the transportation. If these tests are met, the vehicle operated in the service of the one holding out the service to the public could be provided by independent contractors, as in the *Thomson* case, *supra*, so far as authority under the "grandfather" clauses is concerned. However, where operating authority has been "farmed out," principally to noncarriers, as in the "provider plan" considered in the *Riss* case, *supra*, and the elements of direct control over the movement and handling of the freight, and of full responsibility to the shipper, and sole holding out of the service to the public, have been lacking, it has been held that the requirements of the common carrier definition in section 203 (a) (14) of the act have not been met. It appears that under certain of the leasing practices in effect today, these important elements have been greatly weakened.

The importance of the minimum requirements for carriers subject to the act which operate by using vehicles which they do not own, in respect of one major aspect of our regulatory powers, was pointed out at page 360 of the *Riss* case, as follows:

> In any case of a person claiming to be a motor carrier through the use of the vehicles of others, it is of the utmost importance to regulation that it have and exercise direction and control of the operation and of the persons engaged therein. For otherwise an unworkable situation is created, that is, one, for example, in which neither the Commission nor the person claiming to be the carrier would have any immediate and direct control over safety, hours of service of employees, and other matters pertaining to safe, adequate, and efficient service, and the safe operation of vehicles on the highways, all of which were intended by the act. In other words, as to these important features of motor-carrier operation, our regulation thereof, as required by the act, would be negatived to an inoperative degree, as the actual operator would not be subject to our regulations or to the direction and control of the person claiming to be the carrier and subject to our jurisdiction.

The importance which Congress attached to the safety provisions of part II of the act is plainly shown by the fact that while "Section 203 (b) listed many types of motor carriers which were exempted in general from the act * * * that section significantly applied to all of them the provisions of Section 204 as to qualifications, maximum hours of service, safety of operation and equipment." *Levinson* v. *Spector Motor Co.*, 330 U. S. 649, 650.

One of the major issues herein, in addition to those embraced in the stated objectives of the order instituting the investigation, hereinbefore set forth, is the question as to the extent of the Commission's authority, under the act, to regulate the leasing and interchange practices of the carriers. Another important issue is whether the hiring of vehicles, with or without drivers, must be under long-term leases. The latter issue has created the basic cleavage between the parties, as a requirement of this character would have the effect of eliminating trip leases. Other important issues are whether compensation for leased equipment, based on a percentage of the gross revenue earned thereby, should be prohibited; whether possession of the leased vehicle should be vested exclusively in the lessee for the duration of the lease, and subleasing prohibited; whether the driver of a leased vehicle must be an employee of the lessee; whether interchange between common carriers should be restricted to trailers and semitrailers, and whether any carrier or group of carriers should be exempted from any rules that may be prescribed. Additional minor issues relate to the preparation and retention of certain records, methods of identifying rented vehicles, and other matters.

The Director of the Bureau, who testified in support of regulating the leasing and interchange practices of the carriers, did not specifically advocate the adoption of any particular rule or rules, but his evidence strongly indicated that regulation was necessary. In exceptions to the proposed report of the examiner the Bureau recommended the adoption, with various amendments, of the rules proposed by the examiner, hereinafter called the proposed rules, which embraced many of the provisions of the tentative rules attached to the order. Many other parties similarly support the proposed rules, subject to various suggested changes. These proposed rules are set forth in appendix A hereto. The parties which do not support the proposed rules, or most of such rules, favor the adoption of alternative rules proposed by A. T. A., except the latter's Contract Carrier Conference, its Household Goods Carriers' Conference, which represents most of the carriers of household goods in the country, and the Heavy Haulers Division of the Local Cartage National Conference. The rules advocated by A. T. A. appear in appendix B hereto.

Much of the evidence consisted of an exposition of the leasing and interchange practices of the carriers and of opinions, based on experience, of the desirability of certain kinds of regulations, rather than the advocacy of, or opposition to, specific rules. We consider first the evidence tending to support the proposed rules or rules of similar tenor.

EVIDENCE TENDING TO SUPPORT PROPOSED RULES

Bureau of Motor Carriers.—For a number of years, particularly beginning in 1940, the Bureau has had under consideration the leasing practices of the motor common and contract carriers. Meetings were held with selected typical carriers at various points in 1940. In 1941 a study was begun of the practices, including the methods and amounts of compensation paid lessors, and a statistical report on these subjects was released in 1943. During the war, directives of the Office of Defense Transportation, and orders of the Commission, designed to require the maximum utilization of motor vehicles and the conservation of fuel and tires, while not authorizing transportation by persons lacking appropriate authority, nevertheless sanctioned many practices that were permissible only because of the emergency. Leasing among authorized carriers became more prevalent and widespread. Subsequent to the war, because of the desire of many veterans to engage in a business in which, to a certain degree, they could be their own employers, the ease with which they could obtain financial aid in buying equipment, and the difficulties attendant upon entering a regulated industry, leasing practices, particularly the employment of owner-operators, have greatly increased.

Even after the emergency directives and orders were canceled, the Bureau continued to receive complaints regarding the practices of carriers in utilizing equipment under the guise of leasing, which, in some instances, amounted to unauthorized leases of operating rights to others. In 1947 tentative rules were drafted governing these practices which were offered to representatives of the carriers for criticism and suggestions.

In preparation for the instant proceeding an informal investigation was conducted by members of the Bureau's field staff throughout the country. The members of the staff reported specific instances of leasing practices they discovered which were considered unlawful or undesirable because contrary to the public interest. Some 77 examples were compiled of practices that were unlawful, of questionable legal character, or which militated against enforcement of the act and these were introduced in evidence. A summary of the findings in the investigation by the Bureau's field staff is shown in appendix C.

In order to determine the scope and importance of leasing, the Bureau by questionnaire to the 19,001 carriers of property subject to the Commission's regulations that were active in 1947, ascertained the extent to which these carriers engaged in leasing. Certain of the data are summarized in the following table:

Type of carrier and total number	Leasing important	Leasing unimportant	Did not lease
	Percent	*Percent*	*Percent*
General-commodity carriers (5,519)	27.3	9.5	63.2
Tank-truck operators (457)	32.6	14	53.4
Household-goods carriers (2,611)	24.5	6.8	68.7
Heavy haulers (710)	21.3	13.2	65.5
Carriers of other special commodities (6,186)	8.3	6.9	84.8
Not classified (2,038)	50.2	3.7	46.1
Local carriers (1,480)	7.6	8.9	83.5

Of the reporting carriers, 113 local and 3,984 intercity carriers regarded leasing as important, 132 local and 1,363 intercity carriers practiced it, but regarded it as unimportant, and 1,235 local and 12,174 carriers did not practice it in 1947. Leasing was practiced by 5,592 carriers of all types, including 245 local carriers; and 4,047 of the carriers which practiced leasing regarded it as important. This number is over 21 percent of the total number of property carriers. As will be noted from the foregoing table, when the responses were tabulated according to type of carrier, they reflected no important variances from these data except in the case of local carriers, carriers of special commodities other than those shown in the table, and unclassified carriers. The percent of those engaging in leasing to the number of carriers, ranged from 25 in the East and Middle West, to 35 in the South and Southwest, and 36 in central territory.

The carriers which regarded leasing as important in 1947, utilized their leased equipment under 38,785 long-term leases, 104,539 round-trip leases, and 394,896 one-way trip leases. Of the 1,432 carriers using one-way trip leases, 724 carriers leased vehicles on no other basis. The total number of carriers using owner-operated vehicles to any degree was 830; and of this number, 298 carriers used owner-operators exclusively. The total number of one-way trip leases between carriers and owner-operators, 206,740, was over 52 percent of all such leases.

The Bureau also introduced a tabulation of road checks of for-hire and private-carrier vehicles, operated in interstate commerce, for violations of the Commission's regulations, particularly safety regulations, for the 6 months prior to September 15, 1948. The violations were segregated between owned and leased vehicles in the same five regions of the country that were used in polling the carriers on the

importance of leasing. In region B, which includes 10 southern and 3 southwestern States, the percent of owned vehicles found in violation of Commission rules was 94, as compared with 93.6 for leased vehicles. In all other regions, however, the percent of leased vehicles in violation exceeded the percent of owned vehicles. Also, in general, the percent of vehicles in violation of the requirements respecting the keeping of drivers' logs, and maximum permissive daily or weekly driving hours was greater in the case of the leased vehicles in all regions except E, where the percent of excess driving violations was greater in the case of the owned vehicles. Comparisons in respect of these matters are shown in the following table:

Region [1]	Number of vehicles checked		Percent of vehicles in violation		Percent of vehicles in violation by type of violation					
					Keeping of logs		Exceeding daily hours of driving		Exceeding weekly hours of driving	
	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased
A	2,777	758	88.7	89.8	41.58	35.1	3.9	5.87	0.61	1.32
B	1,812	550	94	93.6	39.3	44.4	1.6	3.5	0.53	0.58
C	1,473	809	86.9	90.4	31.7	37.5	5.4	9	2.34	2.87
D	1,348	409	69.3	78.5	38.3	21.2	1.93	2.49	0.32	0.62
E	1,217	330	79.8	85	26.6	32.8	4.43	4.29	0.93	0.71

[1] A: New England States, and New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia.
B: Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas.
C: West Virginia, Ohio, Indiana, Michigan, Illinois, and Wisconsin.
D: Minnesota, Iowa, Missouri, Kansas, Nebraska, South Dakota, and North Dakota.
E: Montana, Wyoming, Colorado, New Mexico, Arizona, Nevada, Utah, Idaho, Washington, Oregon, and California.

Where drivers' logs were not kept, or were improperly kept, it was impossible to make a determination as to violations of the hours-of-service requirements. It also appears that many drivers of vehicles they own that are leased to carriers, when checked on the road for these violations, do not call attention to the fact that the vehicle is not owned by the carrier under whose authority it is being operated.

The data also embraced private carriers, but in this category the percent of vehicles having log violations was much greater where the vehicle was owned than where it was leased.

The study also developed the fact that carriers which regarded leasing as important owned a substantial amount of equipment. For example, in region A, the ownership by for-hire carriers of intercity vehicles, including trucks, tractors, semitrailers, and full trailers, was as follows: Carriers regarding leasing as important, 37,342 vehicles; carriers regarding leasing as unimportant, 9,846; and carriers which did not practice leasing, 36,970.

It is clear that protection of the public is greater by carriers which own their vehicles than by those which rent all their equipment. Also, the use of leased vehicles in any important degree distorts a carrier's operating ratio. In making cost studies and in considering operating ratios of a group of motor carriers, in general revenue cases, the data of carriers which are predominantly users of leased equipment necessarily are excluded. The fact that wages generally are not segregated, in the compensation paid owner-operators, makes impossible a correct determination of the labor costs of such carriers. Some carriers are said to have set up subsidiary corporations from whom they lease vehicles at extremely high rentals, which distorts their operating costs.

Common carriers.—The evidence of these parties was presented by executives having long experience in motor transportation. In general they oppose the trip leasing of owner-operators and the liberal proposals suggested by A. T. A. Some favor abolition of trip leasing and even interchange among authorized carriers, while others would permit trip leasing among the carriers, but only under stringent regulations designed to insure full responsibility of the lessee-carrier to the public and to the Commission. Their opposition to trip leasing is grounded upon alleged laxity in compliance with the Commission's regulations by carriers utilizing leased equipment; and the failure properly to identify such equipment, thereby making difficult the fixing of responsibility for its operation, and upon what they regard as unfair economic advantages to the carrier which does not have an investment in motor-vehicle equipment, thereby enabling it to maintain lower rates. The experiences of some of them are described in the record and will be considered.

New York & New Brunswick Auto Express Co., Inc., of New Brunswick, N. J., a carrier of general commodities over regular routes, owns 150 vehicles but occasionally leases owner-operated equipment in periods of peak traffic and over certain routes when its traffic is unbalanced. This practice on the part of carriers generally is engaged in only to a limited extent to and from points in New Jersey and New York, N. Y., but is growing between New York City and Philadelphia, Pa., where, it was estimated, about 20 percent of the movement is now performed in leased vehicles. A competing carrier employing owner-operators on a percentage-of-revenue basis, established a lower rate than New Brunswick's rate on a commodity moving in truckloads from a Pennsylvania point to a point in New Jersey, whereupon respondent established the same rate, and hired an owner-operator to perform the service. In its experience, carriers using largely owner-operator equipment are continually appearing before rate bureaus seeking to establish reduced rates, which they contend

are compensatory to them, but which are not compensatory to carriers operating owned equipment.

The compensation of owner-operators on the basis of a percentage of the revenue derived from the operation of the equipment is opposed by this and other carriers on the ground that only authorized carriers may divide revenues. It urges that all carriers be required to keep records of physical examination of drivers, of all vehicles utilized, and of all drivers' logs, to advise the Commission annually as to owned equipment, and to file with the Commission copies of all lease agreements. It favors the prohibition of so-called trip leases between carriers which permit a vehicle and driver of one carrier to operate over the routes of another carrier for a small percentage of the revenue, unless the ostensible lessee-carrier complies with all the regulations of the Commission.

It recommends that any regulations which may be prescribed describe the type of identification to be affixed to leased vehicles, and that the cooperation of State officials in enforcing the regulations be sought. Numerous tractor-trailer combinations operate over the principal highway through New Brunswick without identification, and the witness had appeared in lawsuits in which there was a dispute whether the lessee carriers or their owner-operators were liable for damages caused by the operation of leased vehicles.

Yule Truck Line is a regular-route carrier of Milwaukee, Wis., which operates between that point and Chicago, Ill. It discontinued employing owner-operators on trip leases about 2 years ago, because they failed to return its identifying placards. It also was unable to determine whether they complied with the hours-of-service regulations; and, as many did not carry their certificates of physical examination, it could not always be certain as to their fitness to drive. Where it used an operator for only one trip it was not practicable to have its own physician conduct the physical examination. As its truck inspection station is at Kenosha, Wis., it was not always possible to ascertain whether the owner-operator complied with the Commission's safety regulations. It does not believe that carriers can utilize owner-operators in trip leasing and comply properly with the Commission's safety rules. It has experienced no difficulty in leasing trailers from other carriers when it requires additional equipment in emergencies. Traffic between the two cities it serves is predominantly north-bound, entailing some empty mileage from Milwaukee to Chicago. This is an important factor to carriers which own trucks or operate them under long-term leases, but is of no concern to carriers using owner-operators under trip leases. Such carriers can shift

the cost of empty mileage on return hauls from Milwaukee to Chicago to the owner-operator, which the witness considered a wholly unsound economic condition. This shifting of the burden of empty mileage occurs between other points where the traffic predominates in one direction, and owner-operators are utilized under trip leases.

Foster Freight Lines is a regular-route common carrier, domiciled in Indianapolis, Ind., and operates between that point, Chicago, Cincinnati, and Dayton, Ohio, Louisville, Ky., and St. Louis, Mo. It uses equipment under both term and trip leases, although it owns 250 units and regularly employs 350 persons. It spends at least a week checking a driver-applicant's references, ability and experience, and has him examined by its physician. It devotes only a few minutes, however, to gathering similar information of owner-operators. Inspection of their examination certificates is meaningless, as respondent does not know the physician. The check of the operator's equipment, being brief, necessarily is inadequate. It has engaged in trip leasing in order to meet the reduced rates of carriers which operate almost exclusively in that manner. It has lost traffic to such carriers because of lower rates, which, in the opinion of the witness, are possible because these carriers' lack of owned equipment enables them to dispense with personnel and safety departments, and with the keeping of employment records for social security and withholding taxes. The use of a trip lease by a carrier for even an occasional overflow shipment is said to be unnecessary, because other carriers in the same territory usually have empty equipment available at times.

The owner of a tractor rented to a leasing company, and hauling a trailer bearing the name of a shipper, both vehicles being under ostensible lease or sublease to the shipper, solicited a return shipment, after unloading at Foster's dock, although the owner-driver claimed to be in the employ of the shipper, and requested that payment for his service for respondent be made to the shipper.

Plaza Express Company, Inc., of St. Louis, and six other motor common carriers operating over regular routes to and from St. Louis, also favor the prohibition of trip leasing, which would necessitate the utilization of owner-operators only under term leases. These respondents believe this would strengthen the motor-carrier industry by affording opportunity for more careful inspection of equipment and screening of drivers. These carriers have had little opportunity to compete for exempt traffic, such as livestock, because, after the movement of such traffic to St. Louis, the haulers lease their vehicles to common carriers for return movements to their headquarters. Shippers also utilize owner-operators to transport lumber, beer, groceries,

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and many other commodities to St. Louis, at which point the vehicles are leased by common and contract carriers for return hauls. Vehicles under lease to a steel company for transportation of shipments of steel from St. Louis to points in 12 States are leased to authorized carriers for return trips to St. Louis. These respondents contend that this utilization by authorized carriers through trip leasing, of exempt vehicles and those leased to carriers and shippers, for one-way movements, creates unnecessary competition for the authorized carriers, and should be prohibited.

Husman & Roper Freight Lines, Inc., and 12 other motor common carriers operating over regular routes to and from St. Louis, Cincinnati, and Louisville, are concerned with the interchange rule and object to interchange being permitted only in connection with through traffic. Frequently trailer loads of traffic from Louisville, destined to Kansas City, Mo., are received by one of these respondents at St. Louis, and forwarded to Kansas City, with its own tractor. At the same time an empty trailer is leased to the Louisville carrier to replace the loaded equipment. Each of the exchanged trailers is drawn by the tractor of a carrier having operating authority between the points to and from which the trailer is moved. These respondents fear that the proposed rule IV governing interchange would preclude the carrier performing the haul from St. Louis to Kansas City from returning a load of local freight to St. Louis.

The strongest opposition to trip leasing, either of owner-operator equipment, or between authorized carriers, on the part of the regular-route common carriers, was voiced by the president of Adley Express Company of New Haven, Conn., which operates between Boston, Mass., on the north, and Philadelphia, on the south. Adley owns approximately 425 motor vehicles, employs about 650 persons and has a gross tonnage of 11 to 12 million pounds a week. It leases only about 5 or 10 small trucks for pickup and delivery of freight in Philadelphia. It owns 8 terminals and leases 2 others on a long-term basis.

Adley maintains a completely equipped maintenance shop, in which practically any repair job can be performed, and has mechanics stationed at all its terminals to effect emergency repairs, inspect equipment before it is sent on trips and after it returns, and to make repairs in the case of breakdowns on the highway. It has a safety department and three employees who patrol the highways to watch its trucks and render assistance to the drivers. All its vehicles are equipped with tachographs, and violations of speed limits thereon recorded are turned over to its personnel department for appropriate disciplining of the driver. It provides accident and sickness benefits and group insurance for its employees.

Adley has begun to lose its straight truckload traffic to carriers which use operators on a trip-lease basis and which are able to maintain rates lower than those which would be compensatory to Adley. While losing this traffic, Adley is continuing to provide less-than-truckload service, in which carriers who operate principally under trip lease are not interested.

Adley's traffic is unbalanced, the preponderance being north-bound. It experiences what it regards as unfair competition from haulers of textiles or perishable products from the South, which lease their equipment to authorized carriers of general commodities for the transportation of truckload shipments of general commodities on return trips from Boston.

When tendered more traffic than it can handle, Adley diverts the overflow to another carrier for handling and does not accept any part of the revenue therefrom. It is of the opinion that the larger common carriers which provide less-than-truckload service will not long survive if they continue to lose the truckload traffic of the large shippers between the important cities. A letter addressed by Adley to numerous class I motor carriers of property on this subject brought 100 responses in support of its position.

Common carrier associations.—The Chicago-Milwaukee Motor Carriers Conference is composed of common carriers of general commodities operating between these cities, and those in the Chicago-Suburban Motor Carriers Association are short-haul common carriers in the Chicago area. Many of the latter are Illinois intrastate carriers. These groups oppose trip leasing of equipment with drivers, because of the inability of the lessee to enforce the drivers' hours of service, and the alleged unfair advantage which the practice affords carriers engaging in it over other carriers.

These carriers have investments of 10 million dollars in equipment and 3 million dollars in terminals. Their facilities are necessary for the handling of less-than-truckload traffic, the transportation of which is wholly eschewed by the carriers utilizing owner-operators almost entirely, of which type of carrier there are a great many in the Chicago area. They there have a pool of several hundred owner-operators to draw from, which are utilized solely in accordance with their traffic requirements. These advantages are said to have been reflected in reduced rates, which are causing a rapid deterioration in the motor-carrier rate structures in central territory. Nevertheless, the witness estimated that 50 percent of the owner-operators in that area lose their equipment through foreclosure.

The witness for the two groups, their general manager, had observed numerous instances of violations of the act, particularly unauthorized

operations. In a recent example an owner-operator for a carrier having extensive rights over the eastern part of the United States, brought a load of steel from Pittsburgh, Pa., to Chicago, the terminus of the carrier's authority, destined to Milwaukee. The driver had instructions to interchange the shipment at Chicago, but instead, transported it through to Milwaukee, and on his return to Chicago endeavored to get a carrier having operating rights between the two points to validate the unauthorized haul through a trip lease.

Oil-field haulers.—Of these carriers, approximately 300 are members of the Oil-Field Haulers Association, and 50 are represented by the Oil-Field Haulers Conference of A. T. A. They transport oil-field equipment and, in some instances, heavy machinery between nearly all points in the United States. The members of the association are domiciled in eight or nine of the petroleum producing States. Some of them operate as many as 100 pieces of equipment, but the average is 7 vehicles, not including draglines, bulldozers, and other special equipment. They offer to the oil industry a complete service, including the erection and dismantling of oil rigs and derricks, the transporting, handling, and spotting of heavy refinery equipment, and the picking up and cleaning of pipelines. As they generally are authorized to operate in the same territory and maintain the same rates, they aid one another in emergencies requiring additional equipment. Apparently if the carrier which obtains the traffic from a shipper lacks sufficient equipment, he turns the shipment over to a carrier which has equipment available, and the second carrier receives the full tariff rates for the service.

The association conducted its own investigation of leasing, which confirmed the existence of the objectionable practices which were described by others. An actual example was instanced in which the owner-operator of a leased truck, upon reaching destination, offered one of the association carriers his services for a return shipment, provided the carrier would compensate him in cash and not inform his lessee of the transaction. The association advocates the prohibition of subleasing, and a requirement that all leases be for a definite term. It would permit trip leases only in an emergency, upon application to, and approval by, a district supervisor of the Bureau. The association's stand was approved by the Oil-Field Haulers Conference of A. T. A., but was not endorsed by the oil-field haulers of the Rocky Mountain area, which oppose the elimination of trip leasing. According to this group, in emergency situations in which additional equipment is needed, the carrier does not have time to obtain advance approval, as suggested by the association. An example was given of

a threatened blow-out of an oil well from gas pressure in Utah, requiring the carrier to engage all available trucks at three different points in order to transport enough drilling mud to avert the blow-out which would have meant a loss of between $200,000 and $400,000 to the drilling company.

Contract carriers.—The Contract Carrier Conference of A. T. A. favors the abolition of trip leasing of owner-operator equipment by authorized carriers. The primary reason given is the avoidance of responsibility by the carrier for the return of the owner-operator and his equipment to the carrier's terminal, which raises a question regarding control of, and responsibility for the equipment when the owner is not under contractual relations with a carrier. These parties feel also that trip leasing creates an unfair competitive situation by reason of the owner-operator's necessity at times of obtaining a return revenue load upon termination of an out-bound haul under a trip lease on a basis that will pay his expenses. The traffic thus obtained may be the main source of revenue of an authorized carrier.

The conference is supported by the Wisconsin Motor Carriers Association and three large contract carriers, Hillside Transit Company, of Milwaukee, and Midwest Transfer Company and Emery Transportation Company of Chicago. The first-named carrier operates about 100 tractor-trailer combinations in the transportation of petroleum products and groceries.

Midwest operates in 12 midwestern States in the transportation of roofing and building material and related articles, principally fence wire and sewer tile. It owns approximately 100 tractors, 300 semitrailers, and 25 straight trucks, and has under long-term lease from owner-operators about 175 tractors and about 50 tractor-trailer combinations. Emery operates from the Atlantic seaboard to Minnesota and Iowa in the transportation principally of food products and groceries. It owns 50 tractors, 100 semitrailers, and 200 trucks, and has under long-term lease from owner-operators about 50 tractors and about 10 tractor-trailer combinations.

About 10 percent or less, of the traffic of these two carriers is handled by itinerant owner-operators on trip leases. They expect to continue the practice, unless it is prohibited, for competitive reasons, and because of the difficulty of keeping sufficient standby equipment for emergencies. In 1948 their average load factor was between 70 and 80 percent, and between 20 and 30 percent of their total mileage was empty. They trip leased equipment from each other and also to and from other common and contract carriers for the purpose of eliminating this empty mileage. They oppose the trip leasing of

itinerant owner-operators, principally because of the administrative work of examining the vehicles and drivers' logs and arranging for the drivers' physical examinations. Owner-operators under long-term lease can be required to turn in their logs daily and their vehicles and logs can be checked daily. The two carriers treat such owner-operators as employees and pay them wages as drivers, separate and distinct from the hire of their vehicles. Deductions from their wages are made for social security and withholding taxes and group insurance, and they receive paid vacations. In employing an owner-operator on a trip lease these carriers endeavor to have him examined physically, but this is not always practicable.

In the experience of these carriers, because of light traffic east and north of St. Louis, as compared with the preponderant movement in the other directions, the owner-operator who has hauled a load thereto on a trip lease will transport a shipment on the return trip for almost any compensation he can obtain. At Chicago or Cleveland, however, where traffic is heavy, the itinerant owner-operators shop among the carriers for the highest offers for their services. This practice affects the rates of authorized carriers, because those which depend on trip-leasing with owner-operators tend to base their rates or charges on the cost of this itinerant service.

These two carriers have endeavored to enter into long-term arrangements with some of the itinerant owner-operators without success, apparently because of the ability of the latter to earn more revenue through bargaining with carriers in respect of each trip. On the other hand, the two carriers had lost some of their owner-operators, employed on long-term leases, apparently because of the greater remuneration received in trip leasing. In some instances when they had required a physical examination of an owner-operator whom they intended to employ, he had been found physically unfit. In other instances, owner-operator applicants for employment lost interest when told their equipment must be inspected, and that they must have a physical examination.

Both Emery and Midwest exchange vehicles with other carriers, principally on a rental basis. The contract carriers in this proceeding advocate rules which would permit them to exercise virtually the same latitude as common carriers in interchanging vehicles at common points. The two respondents named now exchange equipment as follows: The haul performed by each carrier is under the shipper's direction, and under the respective carrier's minimum rates. The exchange generally takes place when the shipper desires a minimum of handling, particularly in the case of perishable commodities. At

the common point, the first carrier's tractor is uncoupled from the loaded trailer and that of the second carrier is attached. The latter moves the shipment on to the intended destination, and the first carrier has the use of the second carrier's trailer until his equipment is returned. Each carrier pays an agreed mileage rate for the use of the trailer.

Railroads.—Certain eastern railroads, which do not oppose leasing of equipment among motor carriers, contend that it should be regulated. They advocate rules which would require that lessee-carriers assign their own employees to drive leased equipment, and that equipment leased to shippers shall be without drivers and on relatively long-term leases. They argue that the provisions of the act, requiring that operations shall be confined to those authorized in certificates and permits, and our safety regulations, have been circumvented by the use of independent contractors to perform the basic obligations of the authorized motor carriers.

Owner-operators.—Two witnesses for owner-operators are officers of United Truck Owners of America, Inc., an organization of 1,500 owner-operators in 21 States, mostly in the eastern part of the country.

The organization made a survey by distributing between 4,000 and 5,000 questionnaires to its members and other owner-operators with a view to determining the prevailing practices in connection with leasing their equipment and inviting suggestions for improvement. About 200 replies were received prior to the hearing. An analysis of these replies is given in appendix D hereto.

An official of the organization, who had achieved the status of a fleet operator, that is, the ownership of three complete tractor-semitrailer combinations, which were leased to All States Freight, Inc., of Akron, Ohio, advocated prescription of a uniform lease governing relations between owner-operators and carriers. It is in the form of a lease of motor-vehicle equipment, and contains, among other provisions, one to the effect that the carrier is to have complete possession and control of the equipment covered by the lease for the purpose of using it in its motor transportation business, but that the equipment shall be operated only by the owner or a driver approved by the owner. It also would provide that the owner represent that he holds legal title to the equipment, and the parties agree that he shall continue to retain such legal title while the lease remains in effect. In the survey by the organization it was found that about 56 percent of the owner-operators were required to assign the title to the equipment to the carriers to whom they lease. The witness rightly felt

there was some doubt that an owner-operator could assign title to a vehicle to a carrier, and then lease the equipment to the carrier. Also, in the case of damage to the equipment in an accident, the owner is precluded from obtaining redress except through the carrier, if the title has been assigned to the latter.

Another provision of the suggested lease states that no deposit, bond, or other security shall be required by either party thereto. The owner-operators generally are required to deposit about $100 per unit with the lessee-carrier. The witness felt that this was unnecessary, inasmuch as the carriers generally held back a substantial amount of the compensation due the operator. Another provision would require the carrier to procure public liability, property damage, and all cargo insurance, and would relieve the owner from liability for any portion of loss and damage claimed, on the property transported in the equipment. The carrier employing the witness provided such insurance, but the witness was required to pay up to $50 on cargo claims, and he believed this practice to be uniform throughout the motor-carrier industry.

The organization's solution of the trip-leasing problem would be for the owner-operator to carry with him an effective lease, which would remain in effect until the vehicle was leased to another carrier.

In the witness' own operations he had assigned title to the three pieces of equipment to the carrier, and the equipment was painted with the name of the carrier. The lease under which he operated contained a provision requiring that this be done, with the proviso that upon termination of the lease the lessee would reassign the title to him. When his vehicles were stopped on the highway by Commission inspectors, the witness found that it was too difficult to explain that the vehicles were under lease, and the inspectors were given to understand that it was the equipment of the carrier.

Labor union.—The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America appeared in this proceeding on behalf of its 1,000,000 members engaged in various kinds of truck driving, of whom 200,000 drive vehicles in operations subject to the regulatory jurisdiction of this Commission. Its witnesses were or had been owner-operators. Most of them had been owner-operators of tractors, and most had operated under trip leases. Some of them had been induced to become owner-operators through assurances of large earnings by carriers, but most of them had lost their equipment, although all had driven excess hours in violation of the Commission's hours-of-service requirements. Periods of driving without adequate rest by these witnesses ranged from 16 to 76 hours. In addi-

tion, they practiced such dubious economies as letting their equipment roll downhill in neutral gear in order to save gasoline, and almost continuously overloaded the trailers. They deferred necessary repairs on their equipment and operated under hazardous weather conditions.

One of the witnesses had been an owner-operator for about 2½ years, from December 1945 to May 1948, and during this period he worked for four carriers. Prior thereto he had been a truck driver for 15 years, and had financed his equipment from his savings as a driver. It was repossessed by the mortgagee. While an owner-operator, he constantly exceeded the prescribed hours of service, but prepared his log so as not to reflect these violations. He maintained his own truck, but marked the time so spent as time off-duty, and similarly accounted for many additional hours overtime spent in unloading. At one time he drove 29 hours without suitable rest. The carriers by whom he was employed could have detected his violations of the hours-of-service rules, but apparently never checked his log, which he turned in. However, he was cautioned not to show too many hours of driving time in the log. Only one of the four carriers ever checked his certificate of physical examination. None of the four ever inspected his equipment. As he was paid by the ton, and as he needed all the revenue possible, he constantly loaded his equipment in excess of the legal limits. He could not afford to carry public liability insurance on his equipment. He estimated his average net earnings during the time he was an owner-operator at not exceeding 30 cents an hour.

Another witness who had been a truck driver for 6 years prior to the war, subsequently became an owner-operator and invested his life savings of $23,000 in seven pieces of equipment listed at $35,000. All the equipment was eventually repossessed by the mortgagee. This witness' experience was that the only possibility of making a profit as an owner-operator was constantly to exceed the prescribed hours of service. At one time he drove 36 hours without rest. He and other owner-operators with whom he was acquainted regularly falsified their drivers' logs, assisted each other in the falsification, and generally prepared the logs in advance of a trip. One of the carriers by whom the witness was employed never inspected his equipment or checked it for flares, fuses, and fire extinguishers; and never checked on his hours of rest; and only one asked for his medical certificate. He twice hauled explosives without having the equipment properly marked as used for this purpose in accordance with Commission regulations. His equipment was overloaded on about 75 percent of his trips, and in his opinion it was never properly maintained. He estimated his net earnings an an owner-operator as averaging about 19 cents per hour.

Another witness, who had been a truck driver for 25 years in most of the territory east of the Mississippi, operated from May 1946 until the middle of 1947, first with his own tractor and, when he was about to lose the tractor, also with a trailer which the dealer induced him to purchase. He thereupon commenced hauling freight as an itinerant trucker for any carrier who would give him a load under a trip lease. His testimony respecting violations of the hours of service, the failure of carriers to inspect his equipment, the falsification of drivers' logs, and the lack of control over him or his equipment, was similar to that of the other witnesses. The witness had copies of trip leases he had entered into with seven different authorized carriers. As he was compensated on a ton-mile basis he insisted on carrying as much freight as he could load but was fined only twice for overloading. Carriers by whom he was employed advised him as to where the State authorities would have weighing stations so that he could avoid them.

The witness once transported a load of freight for a shipper from New York City to Baton Rouge, La., entirely on his own initiative, and in the complete absence of any carrier's responsibility. He obtained it at a truck stop in New Jersey. His definition of a truck stop was a place where the truck drivers congregated and the man selling gasoline acted as a broker. These stops, as well as highway diners, pass on information respecting State weighing stations and the presence of Commission inspectors. This witness frequently gave a fee or a present to dispatchers or terminal managers in order to obtain a profitable load.

One witness was led to purchase a tractor through an advertisement of a carrier stating that an owner-operator could earn $200 a week, and offering a 2-year lease to individuals who purchased trucks from it. The carrier sold the witness a second-hand tractor at $2,000 above the list price. Another witness who financed the purchase of a tractor through a GI loan, lost his $2,000 down payment in 6 months through foreclosure when he became unable to continue the payments. Another witness, who had been a truck driver for 24 years, returned to driving for a carrier because of a lack of security in working as an owner-operator. All of the witnesses testified that violations of the law or the Commission's regulations by owner-operators were numerous, were virtually compelled by the conditions of their employment, and were the same whether the owner-operators worked under trip leases or long-term leases.

The teamsters union takes the position that the itinerant owner-operator, or gypsy, must be eliminated in the interest of a sound motor transportation system. It argues that no distinction in this respect

should be made between the use of owner-operators under the trip leases or under long-term leases. It contends that such action is in the best interests of the owner-operator, as many of them do not enjoy the benefits of the Social Security Act, because of court holdings that they are "independent contractors," rather than employees within the meaning of that act. The union believes that the authorized carriers could augment equipment as needed by leasing from each other; and it proposes, therefore, that any rules adopted in this proceeding have the effect of prohibiting all augmenting of equipment by such carriers, unless the lessor is also a duly authorized carrier and the leased equipment is driven by an employee of the lessee.

State regulatory bodies.—The Wisconsin Public Service Commission recommends the adoption of regulations which would require that leases be in writing, that they apply for a substantial period; that compensation be based on a percentage of revenue, that subleasing be prohibited, and that the assumption of full responsibility and control on the part of the lessee be required.

The Department of Transportation of the State of Washington, through its chief engineer, explained its rule 40, in effect with minor modifications since 1935. The principal features of this regulation are that the driver of a leased vehicle must be an employee, and that trip leases or short-term leases are not permitted. The lease must be approved by the department, and its agents located throughout the State are authorized to grant such approval. The rule is supported by the regulated carriers of the State and has presented no particular difficulties in enforcement. Household-goods carriers supply the department with a list of leased vans. If a listed vehicle of one of such carriers enters the State, the department is notified and authorizes it by wire to operate over the State's highways. The department urges the adoption by us of regulations of the character contained in the proposed rules, particularly the 30-day minimum lease period.

Seventeen of the States [2] regulate to some degree the leasing or interchange of equipment by motor carriers, but many others apparently control these practices through their regulations covering the licensing of motor-carrier equipment, provisions for special permits for substitution of licensed equipment in emergencies, and other requirements. Many require the owner or owner-operator of a leased truck to apply for a State license in his own name, and that the application therefor be accompanied by a copy of the lease. California's order regulating leasing, was superseded during the war by an emergency order, sti

[2] Arizona, Colorado, Connecticut, Florida, Georgia, Kansas, Michigan, Missouri, Nebraska, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.

in effect, which permits the acquisition of equipment with drivers, without placing such drivers on the payroll of the lessee-carrier, provided the equipment is identified as operated by the lessee and a trip manifest is issued in respect of each shipment transported in the vehicle.

EVIDENCE IN SUPPORT OF RULES PROPOSED BY A. T. A.

A. T. A.—This organization is a federation of 52 affiliated trucking associations, including at least 1 from each of the 48 States and the District of Columbia. California, Illinois, and New York are represented by two associations each. A. T. A. is governed by a board of directors, consisting of seven members from each State. The various types of for-hire carriage in the federation are represented by 10 conferences.[3]

After the question of regulating leasing practices was brought to the attention of A. T. A., it was considered by its respective conferences and at its national conventions. Because of the great contrariety of views on the subject held by the various constituent conferences, difficulty was experienced in reaching agreement upon uniform recommendations.

As indicating the importance of leasing, A. T. A. introduced data compiled from the annual reports of 867 class I common carriers of general commodities showing that if such carriers were required to purchase new units to replace their leased tractors, the cost would be approximately $34,000,000.

A. T. A.'s leasing committee opposes any requirement that leased equipment be driven by an employee of the lessee-carrier. It feels that any such carrier is fully responsible for the actions of the driver under existing Commission rules, and that the nomenclature applied to the driver is unimportant. The status of independent contractors, it points out, has been recognized by the courts for certain purposes.

The leasing committee also opposes any prohibition of subleasing as an unwarranted invasion of managerial discretion. Its position is that if a carrier has the right to lease a truck or trailer which it owns, it has the same right to lease or sublease any other vehicle in its service, regardless of the method by which the use of the equipment is acquired.

A. T. A.'s position generally is that vehicles under long-term lease, and permanently identified as part of a carrier's fleet, should not be

[3] Automobile Transporters, Film Haulers, Oil-Field Haulers, Tank Truck Carriers, Local Cartage Carriers, Regular Route Common Carriers, Irregular Route Common Carriers, Private Carriers, Contract Carriers, and Household Goods Carriers.

subjected to leasing regulations. Its proposed rules, however, recognize the need of regulations applying to equipment utilized under trip lease to promote compliance with our safety rules, compel proper identification of the equipment so as to leave responsibility of the lessee unquestioned, and make available information to aid the Commission in enforcing the act. A. T. A. objects to any prohibition of compensation for leased equipment based on a percentage of the revenue earned thereby for the reason that other bases of compensation could be so framed as to yield equivalent compensation. Its witness expressed the view that trip leasing is an economic necessity of the carriers at this time, and, contrary to the views of many other parties, that present leasing practices do not contribute to highway accidents, impair protection to the public, or result in economic advantages to the carriers which engage in them.

A. T. A.'s position regarding the economic necessity of trip leasing is supported by the common-carrier proponents of its proposed rules. For example, Transamerican Freight Lines, Inc., of Detroit, Mich., a large regular-route carrier in central and eastern territories, having a gross annual revenue of $9,000,000, in a 3-month period ended August 31, 1948, transported 10,673 loads of freight of which about 24 percent moved in leased vehicles. About 7 percent of the latter movement was in respondent's trailers drawn by leased tractors. About 27 percent of its tonnage for the period moved under trip leases. It estimated that if the tonnage transported by its owner-operators in May 1948 had been transported in company-owned equipment, the empty mileage would have cost it $32,360, or about $350,000 on an annual basis.

Some 30 individual carriers, a number of shipper organizations, The National Automobile Haulers Association, the Heavy Haulers Division of the Local Cartage Conference, the Florida Railroad and Public Utilities Commission, and other interests also oppose the proposed rules, particularly the rules that would impede trip leasing and require leased vehicles to be driven by the lessee's employees, on the grounds that these would impair the flexibility of motor-carrier operations. Respecting safety of operations, four large motor common carriers of general commodities presented statistics comparing over-the-road highway accidents of company drivers and owner-operators that were chargeable to the drivers. The ratios of such accidents per 100,000 miles, leased to owned equipment, ranged from 0.39 and 0.46 percent for one carrier, to 1.5 and 3.8 percent for another. The ratios for one carrier for 9 months of 1948 were 0.62 percent on leased equipment and 0.60 percent on company-owned equipment.

Regular-route common carriers.—A number of these carriers conduct their operations wholly or in part in leased equipment and sup-

port trip leasing as an economic necessity. The methods of using leased equipment of seven of these carriers were described in considerable detail. All are substantial carriers, having gross annual revenues ranging up to $9 million in the case of Transamerican Freight Lines, Inc., which conducts a portion of its operations in leased equipment. Middle Atlantic Transportation Co., Inc., conducts all of its operations in leased equipment, under leases made for a term of 1 year and automatically renewable. Only 26 of its more than 100 units are leased from owner-operators, and others are obtained from a leasing company and other individuals. The equipment is titled and registered in the carrier's name.

Continental Transportation Lines, Inc., leases about 310 of the 450 pieces of equipment operated. It leases mostly from owner-operators under trip leases. Many of its owner-operators have served Continental for a considerable period.

Southern California Freight Lines and its affiliates, called So-Cal Lines, have the exclusive use of 60 to 70 pieces of equipment, principally tractors, operated by the owners, and at various times employ other owner-operators who also work for other carriers and own approximately 100 pieces of equipment. So-Cal obtains principally tractors from owner-operators. They are referred to by this carrier as subhaulers or contractors. Under the contract the owner-operator or contractor is liable for $500 of any cargo loss, and it is provided that the operation of the equipment is at no time under the direction or control of the carrier, and that the driver of the contractor's equipment is not in the employ of So-Cal.

Bridgeways, Inc., of Detroit, Mich., owns no equipment but leases about 90 percent of the semitrailers, 50 percent of the tractors, and 60 percent of the pick-up and delivery equipment needed from affiliated corporations domiciled in the States in which Bridgeways principally operates, Michigan, Indiana, and Ohio. This is done for the purpose of having sufficient equipment licensed and titled in each of the States, in order to reduce costs. A carrier obtains no benefits under the reciprocal statutes of the States, unless title to the equipment is vested in a corporation domiciled therein. Bridgeways' witness was of the opinion that the danger of inflating the operating costs of a carrier by excessive rentals to an affiliated corporation for equipment could be obviated by requiring disclosures of the affiliate's operating costs in any proceeding in which increased rates are sought.

Only about 10 percent of Bridgeways' traffic is transported under trip leases by owner-operators. In its experience it has found it impracticable to utilize owner-operators under trip leases for hauls less than 250 miles.

Middlewest Freightways, Inc., of St. Louis, employs 20 owner-operators of tractors under 90-day leases, terminable on 30 days' notice, and uses about 15 vehicles each month under trip leases. As previously indicated, motor-carrier traffic to and from this point is unbalanced and for that reason these respondents contend that trip leasing is necessary in their operations. About 40 percent of Middlewest's traffic is transported by owner-operators and 15 percent moves in trip-leased equipment.

Central Truck Lines, of Tampa, Fla., is a large common carrier operating in Florida and Georgia with substantial intrastate operations in Florida. Although it owns 300 pieces of equipment, approximately 20 percent of its total mileage, principally in its longer interstate hauls, is accounted for by trip-leased equipment. Most of this is obtained at Atlanta, Ga., from private carriers of fruits and vegetables, and from exempt haulers of these commodities to the North and Middle West, who would otherwise return their equipment empty to the South. Central's witness was aware of the growing practice among the exempt commodity haulers of transporting general commodities on return trips to Florida under the guize of vehicle leases to shippers.

All of the leases under which these carriers obtain equipment, including trip leases, are in writing. Their methods of compensation, inspection of equipment, checking of drivers' qualifications, and other matters, differ considerably. Middle Atlantic pays for the use of the equipment on a ton-mile basis, deducts the driver's wages therefrom, if he is an owner-operator, and carries him on its payroll as an employee. Continental pays its owner-operators on a combination tonnage and mileage basis and guarantees him a minimum out-bound load of 24,000 pounds. It does not regard him as an employee, nor guarantee him a return load. So-Cal compensates its subhaulers on the basis of a percentage of the revenue received for the movement. If the subhauler only provides the tractor, an undisclosed mileage charge is deducted from the subhauler's share of the revenue. Transamerican compensates its owner-operators either on a tonnage or combination tonnage and mileage basis. It assumes no responsibility for obtaining a return load for an owner-operator on the completion of a haul for it. Middlewest pays its owner-operators on a mileage basis. It places them on its payroll, keeps their compensation for driving separate from that paid for the use of the equipment, and makes deductions from the wages for social security and other items. Central Truck Lines pays for the use of equipment obtained under trip leases on the basis of 17 to 25 cents a mile.

Continental will not employ an owner-operator whose certificate of physical examination is more than 1 year old. The owner-operators must turn in their drivers' logs at the end of a trip before they are paid. Its company drivers, however, are required to turn in their logs for the preceding daily or weekly period prior to starting on a trip. So-Cal states that it treats its subhaulers the same as its company drivers in these respects. Transamerican inspects owner-operator equipment, drivers' log books, and certificates of physical examination, and makes inquiry of their previous employers regarding their safety records. Middlewest screens its owner-operators and tests their driving abilities before engaging their services, but concedes that the check is not as complete as in the case of its employee drivers.

So far as the record discloses, only So-Cal, of these regular-route carriers, attempts to limit its responsibility contractually for the owner-operator equipment used in its service. These carriers, except Central and a group of other Florida carriers apparently believe that their responsibility for the operation of rented equipment is so definitely fixed by law that regulations more stringent than those proposed by A. T. A. are not necessary.

The Florida group of carriers, including Central, which insist that continuation of trip leasing to and from Florida is vitally necessary because of the peculiar traffic conditions hereinafter described, are nevertheless alarmed at abuses that have developed in connection with the practice. They advocate the prescription of a uniform lease and they offer suggestions for special rules governing trip leasing. A summary of their suggestions is in appendix E. Their position regarding the importance of trip leasing to and from Florida is supported by the Florida Railroad and Public Utilities Commission, the Florida Rate Conference, Growers and Shippers League of Florida, Florida Citrus Commission, and Florida Fruit and Vegetable Commission.

For the 1948 season, through December 8, the citrus fruit movement from Florida aggregated almost 22,000 carloads, of which 9,917 or 45.7 percent, was transported in motortrucks, a substantial increase over the previous season. The Florida common carriers do not transport perishable fruits and vegetables north-bound, principally because of a lack of adequate equipment and restricted operating authorities, either as to routes or territories, and almost 100 percent of the traffic moves in the trucks of dealers or carriers that specialize in transporting such commodities exclusively and have refrigerated or semirefrigerated equipment.

The Florida agricultural industry is said to be dependent on this service. There is a heavy movement of general freight south-bound to Florida in the winter season which coincides with the heavy north-bound movement of perishable commodities, which the common carriers in the North are unable to handle because of lack of proper equipment. The carriers of the exempt commodities to the North and the common carrier of general commodities to the South would have to return their equipment empty except for the practice whereby the common carriers lease the equipment of the exempt commodity haulers for the transportation of general commodities south-bound. Any restriction of this practice, the Florida interests contend, would result in increased charges, both on the north-bound movement of fruit and vegetables, and on the south-bound movement of general commodities. A similar position is taken by the Department of Agriculture, the National Fisheries Institute, and others, with respect to any regulations that would preclude leasing of vehicles used in transporting the commodities specified in section 203 (b) (6), by authorized carriers, for return hauls.

Irregular-route common carriers.—American Transit Lines, of Chicago, has authority to transport general commodities in an area extending radially from and to Chicago as a base, to and from Omaha, Nebr., on the west, and to and from western New York on the east, and operates 100 complete units, of which about 16 are owned, the remainder being leased from owner-operators. Its gross revenue in 1947, derived principally from the transportation of steel products, was $1,000,000. Because of the need of special loading devices in the handling of steel products, it has experienced difficulty in effecting interchange at Chicago, and on that account has been granted temporary authority to perform service beyond that point.

This respondent compensates its owner-operators on the basis of a percentage of the revenue. The operators await their turn at terminals for loads with company drivers. They may be away from the home terminal in Chicago for 4 or 5 days, but are required to turn in their drivers' logs on completion of trips. The operators' violations of the hours of service are reported at the same time as the violations by company drivers, and the witness believed that the violations were not as numerous as in the case of the company drivers.

American Transit utilizes exempt livestock haulers west-bound from Chicago. It has no means of determining whether the drivers of these trucks have complied with the Commission's hours-of-service regulations prior to their employment by it. The witness believed they complied with the regulations because of an apparent lack of accidents,

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while transporting American Transit's freight. As dispatchers are not employed by American Transit, except at Chicago, it has no means of checking on the safety compliance of its owner-operators except from their daily logs. The witness expressed the opinion that the only abuse in leasing practices in central territory, was an occasional failure of a carrier properly to identify a leased vehicle in its service. Although 75 to 85 percent of American Transit's leases are for definite periods, its position is that the prohibition of trip leasing would hamper it because a large part of its traffic is seasonal.

The Transport Corporation of Richmond, Va., specializes in the transportation of leaf tobacco over irregular routes between points in North Carolina, South Carolina, Virginia, and Maryland. In 1947 it transported 454 million pounds, or about 25 percent of the entire United States tobacco crop, and approximately 45 percent of the crop grown in the area which it serves. Although there is some movement of tobacco throughout the year, the heavy traffic therein is during a 17-week period beginning in early August and ending in late November. In 1947 Transport averaged 200 truckloads per day during the marketing season of 83 days, and 51 truckloads per day in the remainder of the year. It transports leaf tobacco from the market floor to the redrying plant, and redried tobacco from the plant to buyers or warehouses. It also carries hogshead material and burlap sheets, and transports both exempt and nonexempt commodities in the same load.

Transport owns 51 flat-bed trailers, which are adequate for its normal operations, and augments its equipment during the marketing season by hauling agreements with approximately 250 produce haulers, farmers, cotton haulers, haulers of other exempt commodities, and with common and contract carriers. The agreements run for the marketing season, or as the service may be required, and are continued in effect from year to year, subject to 30 days' notice of cancellation on the part of either the carrier or the hauler. Some of the same operators have worked for Transport for 15 years, but there is a considerable turnover as the market moves to the North.

Transport does not regard its owner-operators as its employees. They insist upon being compensated on a basis of a percentage of revenue because of the number of very short hauls, and the time consumed in waiting for loading and unloading of their vehicles. Transport identifies the leased equipment by means of a placard on each side of the tractor. It carriers public liability, property damage, and cargo insurance covering all leased vehicles. Medical certificates are required of the drivers, and they send in their daily logs, along with

the receipts for settlement of their hauling charges. Transport's position is that it would not be justified in owing sufficient equipment to handle seasonal traffic, and that any regulation interfering with its leasing would divert the transportation of tobacco to the unregulated carriers.

Automobile transporters.—The National Automobile Transporters Association is a voluntary organization of 115 motor common carriers engaged in the transportation of automobiles, commercial vehicles, and parts, throughout the United States, by the drive-away or truck-away method. Carriers engaged in transportation by the drive-away method would not appear to be affected by any regulations contemplated in this proceeding. The association members handle approximately 90 percent of the movement of automobiles and commercial vehicles in the country from points of manufacture and assembly.

Practically all new automobiles are transported by the truck-away method, on specially designed trailers, capable of handling four automobiles, which are not readily adapted to the transportation of other types of freight. The traffic moves predominantly in one direction with an almost 100 percent empty return movement, and the rates therefor are made accordingly. There are said to be very few itinerant owner-operators available for this type of transportation who own trailers. A majority of the members of the association occasionally obtain equipment through lease arrangements or interchange with other carriers, and many lease tractors only from owner-operators. The trailers are either owned by the carriers or under long-term lease to them.

Four representatives of member carriers testified in support of the A. T. A. rules. Generally they hire owner-operators under long-term lease, and desire to continue this arrangement, the paying of compensation on a percentage-of-revenue basis, and the interchange of equipment with other carriers, without regard to whether these are authorized to serve the interchange point. Two of these carriers, Dealers Transport, Inc., and Arco Auto Carriers Inc., both of Chicago, lease power units from owner-operators and fleet owners (those owning in excess of three units) under leases of 30 days to 1 year. There is some indication that these carriers also lease their trailers to the owners of the tractors under contract to them, and then lease the trailers from the tractor owners, but the details of this procedure are not clear. The drivers of the leased tractors are considered employees of the carriers, and are given the same course of training as company drivers. No distinction is made between them and the company drivers with respect to standards of safety, control, or inspection of equipment. Tractor operators are paid 65 percent of the gross

revenue. In the few instances where the operators also own and haul trailers they are paid 75 percent of the gross revenue. The owner-operators attend to the licensing of their equipment, and Dealers and Arco provide any additional plates required, furnish permits, and pay bridge tools. They find no difference in the keeping of drivers' logs between their own drivers and the owner-operators, but concede that it is a little more difficult to detect falsification by owner-operators than by company drivers.

Generally an automobile transporter carries almost exclusively one make of automobile. When the plant it serves is closed, the plants of other makers may be in full production, and in such instances the carrier makes its equipment available to another carrier who has been tendered more traffic than it can handle. The two carriers mentioned have on occasion interchanged equipment between points, both of which were authorized in their respective certificates. In the case of interchange of a trailer drawn by a leased tractor, the trailer and tractor are turned over to the other carrier and the same driver continues the driving. This is permitted under the contracts with the owner-operators. It is represented that the carrier is able to eliminate empty mileage by leasing the equipment for return movements after completing an out-bound haul.

Dealers has utilized owner-operators in emergencies under trip leases for the transportation of new commercial trailers by truck-away. Generally it is able to return them to the origin point with a load, but does not promise to do so. An example was given of an operation in which the driver might make several consecutive trips before returning to the origin point. If the use of itinerant owner-operators under trip leases were prohibited, Dealers' operations would not be appreciably affected, as such operators handle only about 5 percent of its traffic.

United Transport Inc., of Oklahoma City, transports automobiles, in secondary or subsequent movements, by truck-away from Memphis, Tenn., and St. Louis, to points in Missouri, Kansas, Oklahoma, Texas, Arizona, and New Mexico. At Memphis its traffic is received from Commercial Barge Lines, a water carrier, and at St. Louis it interchanges with one or more motor carriers, operating from the manufacturing points. It does not engage in trip leasing, but does lease 16 tractors from owner-operators. The leases are continued from year to year, but contain a provision for cancellation on 30 days' notice. In addition, it utilizes 141 tractor-semitrailer units, and 26 tractors. Between 12 and 15 percent of its traffic is handled by owner-operated units. It pays the drivers' wages and compensates them for the use of the equipment on a percentage of the gross revenue

The leases cover the empty return, as well as the loaded movement of the equipment. United considers its control over its owner-operators, with respect to keeping of daily logs, as good as in the case of its company drivers, and that the equipment of the owner-operators is as well maintained and as safe as its own equipment. In the opinion of its representative, the opportunity to become an owner-operator has attracted a better class of employee than those who are interested simply in driving, and that the owner-operators are more careful of their tractors than the company drivers, and frequently initiate practices which result in economy and better service.

Occasionally when there is an especially heavy movement of automobiles to Memphis, United leases tractor-trailer combinations with drivers from other carriers. It places the drivers on its payroll, checks their medical reports, logs and equipment, and identifies the leased units as being in its service. The drivers are required, after making deliveries, to return the signed delivery receipts and logs to it. United contends that such arrangements between authorized carriers are necessary in order to cope with fluctuations in the movement of new automobiles.

In interchanging traffic at St. Louis with connecting carriers, United leases the trailers and, after inspecting them, moves them to ultimate destinations with its tractors, operated by its drivers. These arrangements are entered into when either a factory or automobile dealer desires a particular load to be handled without a transfer of lading en route. One of these arrangements, in connection with traffic from Detroit, has been in effect since prior to the war. United occasionally leases both tractor and trailer in connection with an interchange movement from another carrier for movements in its territory, which it handles in the same way as it does its own units. The driver of the other carrier's equipment is put on United's payroll, given a medical examination, and required to furnish a driver's log the same as though he were an employee of United. United furnishes the other carrier, party to the interchange, with a unit to take the place of the one received. Where only trailers are interchanged, a nominal trip rental is paid, and where a tractor accompanies the trailer, a percent of gross revenue is paid by United to the other carrier. It appears that some of the movements described by United as interchange, could be performed entirely by the originating carrier in direct single-line service. United, however, is opposed to any provision which would prohibit interchange where the point of delivery is served by both carriers.

Automobile Shippers, Inc., of Detroit is a large transporter of automobiles whose position is similar to that of United. It operates 205 tractor-semitrailer combinations, and owns all the trailers, but leases 195 tractors from owner-operators under long-term contracts, subject to cancellation on 30 days' notice. A specific trailer is assigned each owner-operator, who furnishes the tires for it. This practice has prevented the driver from using the trailer brakes to the exclusion of his tractor brakes. Except for differences in compensation, its experience with its owner-operators, with respect to control and compliance with safety regulations, is said to be the same as that of United. Automobile Shippers has the exclusive use of the leased equipment, and does not permit subleasing. It has paid compensation for leased vehicles on a percentage-of-revenue basis for more than 15 years, and opposes any prohibition of this method, because it is an established practice in the automobile industry, is simple and, in the opinion of the witness, properly compensates the owner-operator for his services.

Tank truck operators.—Evidence was presented on behalf of four of these carriers which are engaged in the transportation of liquid petroleum products, principally between points in the Middle West and the Northwest, and operate equipment which they own, vehicles under long-term lease, rented on a percentage-of-revenue basis, and equipment trip-leased from other carriers. R. B. Wilson, of Denver, Colo., who operates between points in the States named, except Texas, represented these carriers. He owns about two-thirds of the equipment used in his operations and leases the remainder, principally from owner-operators under 6-month leases, containing a 30 days' cancellation provision. The owner-drivers are paid wages corresponding to the company drivers' pay scale. Deductions are made therefrom for various taxes and other items. In some instances, Wilson has sold equipment to his drivers who desired to become owner-operators. He has found it more efficient to operate leased equipment out of his scattered terminals than to operate his own vehicles.

Trip leases between these carriers are a general practice in the territory. Of the tonnage transported by Wilson for the first 9 months of 1948, 4.6 percent was transported on equipment obtained under short-term leases from other carriers, which generally hold authority in the same territory, on the basis of a percentage of revenue. The corresponding ratios for two other carriers in the same territory, M. & M. Truck Co., also of Denver, and H. B. Bryan, also known as Melton Transport Company, of Cheyenne, Wyo., are 14 and 31 percent, respectively. When equipment with drivers is hired from other

authorized carriers, Wilson does not put the driver on his payroll, but claims to accept full responsibility for the operation of the equipment. Wilson contends that he could not operate economically if compelled to own sufficient equipment to care for the periods of peak demand for petroleum products. To Estes Park, Colo., and Jackson and Cody, Wyo., in November 1948, he transported 60,280, none, and 55,250 gallons of gasoline, respectively, whereas to the same points in August 1948 he transported 205,230, 140,650, and 241,365 gallons of gasoline.

Wilson believes that it would be possible to execute written leases except in emergencies, and he urges adoption of rule 7, proposed by A. T. A., which would permit deviation from the rules in such cases.

Pipeline stringers.—There are a few of these carriers, who are not oil-field haulers, but specialize in stringing main trunk pipelines by taking the pipe from a rail car, loading it on a truck and trailer and transporting it to the pipeline right-of-way, and thence along the right-of-way. Special equipment is required for this operation as the driver must be able to operate over all types of terrain. About 1 year is required to train a good driver. Leasing is resorted to only when a large amount of the pipe is received at a railhead. The carriers do not consider it practical in such cases to obtain authority before entering into a lease. They occasionally hire a tractor in the field, and sometimes lease a few trucks for a short period.

These carriers object to what they consider the unfair competition of contractors which perform the pipe-laying operation by leasing trucks, frequently from carriers lacking authority, and performing the transportation from the railhead to the pipeline right-of-way. In one example instanced by the witness, a carrier which applied for temporary authority to perform transportation for which these carriers were qualified, leased his equipment to the pipeline company when the application was denied at rates lower than those of the regular stringers.

Heavy haulers.—This group of motor common carriers, numbering about 60, are embraced in the Local Cartage National Conference. All member groups in the conference except the heavy haulers have endorsed the proposed trip-leasing plan of A. T. A. These carriers generally have limited certificates, because until recently the moving of large heavy objects and machinery requiring special equipment was concentrated in the large industrial areas. Development of hydroelectric projects throughout the country, and decentralization of industries now require movements by these carriers for considerable distances and entail the use of special equipment, such as long, low-

bodied trailers equipped with cranes and winches. These must be operated by highly skilled personnel. Itinerant owner-operators are not utilized, and additional equipment when neeeded is rented from other certificated heavy haulers, the latter also providing the drivers. These carriers will not permit a driver unfamiliar with their equipment to operate it.

Performance of a through service by these carriers through interchange would not be feasible if this entailed transfer of the lading. When one of them initiates a movement destined to a point in another carrier's certificated territory, the practice has been for the first carrier to perform the haul through to destination in its equipment and with its driver under a trip lease of equipment to the second carrier. The group feels that the proposed rules would preclude this practice. They urge provision in any rules for exemption of their practices; and, if this is not granted, they request a further hearing with respect to their situation. For reasons hereinafter indicated, the petition is denied.

HOUSEHOLD GOODS CARRIERS

These carriers number about 4,000 or one-fifth of the regulated carriers subject to the act. They represent the largest group of specialized carriers under the Commission's jurisdiction, and are subject to the regulations prescribed in *Practices of Motor Common Carriers of Household Goods*, 17 M. C. C. 467. They transport the entire contents of a household to a new location. Prior to the advent of the motor van, this service was performed by rail, involving cartage to a warehouse, packing and crating, transportation by the rail carrier, carting to, and unpacking at the residence. The operations of these carriers entail preliminary negotiations with the shipper, arrangements for a carrier's representative to visit the location of the shipment in order to determine the type of equipment needed and to coordinate its use in conformity with the wishes of the shipper. Fragile articles must be packed, the carrier must be informed as to the type of house to which the moving operation is to be performed, and arrangements must be made to have the shipper or someone for him present to receive the shipment.

The tentative rules appended to the order of investigation were studied by a committee representing all different types and kinds of household-goods carriers and composed of officials of a number of the large household-goods carriers including the so-called Nation-wide systems. The committee was unanimously opposed to those rules, and recommended that the Commission be petitioned to consider the leasing practices of the household-goods carriers separately, either in Ex

Parte No. MC–19, reopened for that purpose, or by a hearing on a separate record. A petition pursuant to those recommendations, filed in this proceeding, was denied. With one exception these carriers except to the proposed rules, largely on jurisdictional grounds, and on the ground that such rules, as applied to them, would be unreasonable and would destroy the efficiency of their present operations.

These carriers presented the testimony of 17 witnesses, of whom 1 represented the Household Goods Carriers' Conference, 2 represented independent carriers, and the others the Nation-wide carriers. The *modus operandi* of the latter carriers and their agents was described in detail. The testimony of four other witnesses was stipulated.

The Household Goods Carriers' Bureau is a Nation-wide organization of approximately 2,200 household-goods carriers, which was organized to stabilize the practices and tariff publications of such carrier. It and the Household Goods Carriers' Conference of A. T. A. represent approximately 80 percent of the household-goods carriers of the country. Although the survey of the Bureau, herein before referred to, indicated that leasing was unimportant amongst household-goods carriers, the two organizations contend that it is an important and necessary practice, and that any regulations applied to these carriers, be prescribed only after careful and complete analysis of the differences between their operations and those of other motor carriers. As showing the importance of the practice, in 1947, 46 class I carriers, engaged almost exclusively in the transportation of household goods, owned only 30 percent of the vehicles used, leased 50 percent of their vehicles, and purchased 20 percent of their transportation. Of their total revenue mileage, 42 percent was by leased vehicles, and 58 percent by owned vehicles. As indicating the efficiency of the operations of such carriers, it is shown that for a 10-year period ending January 1949 despite an increase in labor costs of about 100 percent, the average increase in rates was about 13.5 percent for hauls in excess of 100 miles.

A witness for the two organizations referred to conceded that about 10 percent of the household-goods carriers generally were violating the Commission's rules and regulations, but he contended that such violations could not be eliminated through regulations. It is further conceded that leasing among household-goods carriers has increased, but it is argued that this has facilitated the movement of the traffic, and that the carriers are making more efficient use of equipment. The conference maintains its own highway patrol to check on law and safety observance of drivers for its members.

Of the five Nation-wide household-goods carriers, all except Greyvan have operating rights in the 48 States and the District of Columbia. Greyvan's authority embraces 38 States, generally east of the Rocky Mountains, and the District of Columbia. These Nation-wide carriers function in large part through agents located at various points throughout the country with whom extensive leasing arrangements are in effect. Except as to Greyvan and Allied Van Lines, most of these agents are authorized interstate carriers having authority to serve a smaller scope of territory than the principal carrier. Greyvan's agents are noncarriers, and the agents of Allied Van Lines have no interstate operating rights, having conveyed them to Allied, pursuant to the plan submitted to and approved by the Commission in *Evanston Fireproof Whse.—Control—Allied Van Lines*, 40 M. C. C. 557. The Allied agents, most of whom retain their local and intrastate rights, provide all equipment needed in Allied's service. The other national systems, except Greyvan, own some equipment and lease the remainder under various arrangements with agents and others as hereinafter described. Appendix F hereto presents a summary of certain data introduced by these Nation-wide carriers, other than Allied, in respect of their capitalization, available owned and leased equipment, and other matters. It indicates the substantial nature of the operations performed by these carriers in leased equipment.

Allied Van Lines.—This carrier, as stated, owns no equipment, and all vehicles used in its service are owned or controlled by its so-called hauling agents and are available to Allied under leases having a term of 1 year, and subject to cancellation on 30 days' notice by the agent and on 60 days' notice by Allied. The relations of the agents to Allied in respect of its interstate operations appear to be those of employees. Under the standard lease between Allied and its agents, which was considered in *Evanston Fireproof Whse.—Control—Allied Van Lines*, *supra*, Allied has possession and control of the vehicle and supervision of the driver while in its service and accepts full responsibility as a carrier to the general public, the shipper, and this Commission in respect of the transportation as though it were the owner of the equipment.

Allied does not lease vehicles for a single trip, sublease equipment, or interchange it with other carriers. It maintains a comprehensive program for training drivers and keeping them informed of Commission regulations, particularly those pertaining to safety.

The compensation of Allied's hauling agents depends on whether the agent books the business and also performs the line haul, or whether the agent provides the vehicle for transporting shipments

booked by other agents. In the first case, the agent receives all revenue, less an amount not indicated, which contributes to the support of Allied, and in the second instance, the booking agent receives about 21 percent of the revenue and the hauling agent 30 cents per mile for the distance traveled, less a loading and unloading charge.

Greyvan.—This carrier in 1936 owned a few pieces of equipment, although previously it had conducted operations by individuals who owned the vehicles. Since the war it has sold all its equipment and returned to a 100 percent owner-operator plan. The contract under which Greyvan utilizes the vehicles and the owner-operators is not in strict terms a lease, but may be characterized as a hauling contract with the owners, who are considered to be independent contractors, and in the contracts are referred to as "truckmen." Greyvan's official who testified intimated that the arrangement was duly considered in its "grandfather" proceeding, but in the report therein, *Greyvan Lines, Inc., Common Carrier Application*, 32 M. C. C. 719, 724, in respect of this respondent's use of owner-operators, it was found that: "The transportation service performed * * * in vehicles leased by applicant from others was performed by applicant."

As the question of control of leased equipment and responsibility therefor to the public is of paramount importance, it seems pertinent to consider relevant items of Greyvan's contract with its owner-operators as disclosed of record. These are set out in appendix G hereto. The undisclosed items of the contract are described as covering the following subjects: Helpers, packing, driving, delivery, insurance, cash deposit, collections, claims, maintenance, operating costs, licenses, charges, remuneration, precedents, cancellation, and terms. Greyvan provides cargo insurance and its owner-operators provide public liability and property damage insurance. The contract as asserted by Greyvan, does not purport to be a lease of equipment to it, nor does it contain a clause whereby Greyvan assumes responsibility as a carrier to the shipper, the public, and the Commission.

Greyvan does not trip-lease from itinerant owner-operators. All its independent contractors are said to be under long-term contracts. It believes that this system obtains a higher type of individual than the usual run of truck drivers. Greyvan advertises the fact that its vans are owned by the operators. Special training is given the operators before they enter Greyvan's service, and they must pass written examinations in respect of safety rules and Federal and State regulations. The vehicles are inspected at Chicago when the operator commences hauling for Greyvan, and they are also inspected at its branch offices. Daily logs are required of the drivers, and on the failure or refusal to furnish them, they are routed back to Chicago.

Continued disregard of Greyvan's rules may result in terminating the contract. Accidents and excess driving are reported by Greyvan to the Commission.

Greyvan accepts some shipments destined to points beyond its authorized territory. These are handled through physical transfer of small shipments, or through interlining; the interchange of equipment with the other carrier being effected through assigning Greyvan's truckmen's contract to the delivering carrier, and the revenues are prorated on a mileage basis. The delivering carrier, in such cases enters into a contract with Greyvan for the use of the latter's driver and his services, as Greyvan disclaims responsibility for him beyond the interchange point.

The average gross earnings for 45 of Greyvan's truckmen for the 6-month period ending October 31, 1948, was over $1,600 per month. Two testified herein whose earnings, after deducting hauling expenses and payments on equipment, were between $6,000 and $8,000 a year. As independent contractors, these individuals feel that they are in business for themselves.

United, Mayflower, and North American.—The use of equipment under leases, largely with carrier agents, of these national household-goods carriers has substantially increased since the war. For example, United handled all business in company-owned equipment in 1946. Mayflower began the use of leased equipment in October 1945, prior to which time it owned all its equipment. North American, until 1939, operated exclusively with leased equipment; from then until 1943 it operated almost exclusively with its own equipment, and since 1943 it has, as indicated in appendix E, conducted substantial operations with leased equipment.

These carriers have seasonable imbalances of traffic, and at certain times so much business is offered them that it is said to be impracticable to keep sufficient owned equipment on hand to transport it. There appear to be a greater number of movings from the North and East to the West and South than in the reverse directions. At times the carriers are confronted with extraordinary demands for service. For example, Mayflower was tendered the movement of the household effects of 2,300 families of workers for the Chance Vought Aircraft Corporation, from Bridgeport, Conn., to Dallas, Tex. Additional equipment, besides that obtained from its hauling agents, represented by 14 tractors, was leased from individuals. Mayflower supplied its trailers. It expected to retain the individuals in its service.

Another reason given in support of the necessity of leasing by these national carriers is the lack of capital that would be required to replace their present equipment if they were required to own all of it. Estimates range from several hundred thousand dollars to as much as two million dollars. Leasing is said to enable them to reduce their empty mileage, and to provide a reserve pool of equipment when needed. Greyvan, however, has no such pool, and no hauling agents other that its owner-operators. It is indicated that it does not endeavor to provide for the transportation of shipments when it does not have the equipment available, and that all equipment it obtains under the hauling contracts is retained in its service for a considerable period.

The pertinent details of the practices of the three national systems other than Allied and Greyvan may be grouped under the following appropriate headings:

Identification.—Each of the agreements between these three national household-goods carriers and their agents provides for the identification of the equipment as that of the lessee while hauling shipments in the lessee's name. United does this through a card displayed in the cab, which states that the vehicle is under lease to United and that a copy of the lease may be inspected at the principal office in St. Louis or at the office of the owner of the vehicle. A complete description of all United's leased equipment is kept at its headquarters and at the offices of the agents. United assigns to each piece of equipment a unit number, which is painted thereon and referred to in all transactions.

Mayflower also places a card in the cab of the leased tractors, giving notice that the vehicle is leased to Mayflower. The tractor is also identified as being operated by Mayflower through a removable metal display card on the side thereof, and the trailers bear the legend on the side: "Exclusive Agent Aero Mayflower Transit Company, Nationwide Furniture Movers."

North American's "agent's hauling contract" requires that the phrase: "Leased to NAVL Inc., Fort Wayne, Ind., MC–107012" be displayed on each of the tractor's cab doors, and that the identification number of the equipment be displayed on the van.

Control of leased equipment.—United leases equipment only from its agents who are also certificated carriers. It issues to all these hauling agents a pamphlet containing detailed instructions relative to booking of, and registering with United of shipments accepted by the agents, and minimum standards of the equipment to be leased. An instruction particularly emphasized states that: "United exclusively

will assign, determine, dispatch, supervise and direct the movement of all equipment which handles shipments transported upon United's billing, and direct and supervises the service to be performed with respect thereto." Clauses in the lease provide that possession and control of equipment for any given trip shall be vested in the lessee, and shall be good against all the world, including the lessor, and that United may discharge the driver. United requires a photostatic copy of the certificate of ownership of each leased vehicle, and it obtains the required State permits therefor in the States where it is desired to register such equipment.

United calls its leased equipment into service under a so-called "Certificate of Trip-Lease," signed by an authorized employee in United's dispatching office, which describes the equipment, refers to the particular transportation by a trip number, and indicates when the transportation will be completed. The agent's drivers are required to make daily reports in triplicate, one copy of which is sent to the agent by whom the driver is employed, one copy is sent to the St. Louis office, and one copy is retained by the driver. One-half of the form is taken up by the driver's daily log. The same dispatching procedure is followed in handling a shipment, where the order is taken by an agent, whether owned or leased equipment is used. The nearest available equipment is utilized, whether it is that of the carrier, the agent, or another agent.

Mayflower leases equipment under a so-called master lease, executed by one of its dispatchers, under which possession and control of the equipment are vested exclusively in Mayflower. It reserves the right to reject the driver provided by the lessor agent. A list of equipment covered thereby is on the back of the lease. In the event of changes therein the agent's copy of the lease is sent to Mayflower and a new lease containing a revised list of equipment is sent to the agent. The latter bears the cost of maintenance, repair of equipment, and license plates therefor.

The equipment specified in the master lease is called into Mayflower's service when the dispatcher executes in triplicate a certificate of trip lease similar to that of United, hereinbefore described. The original is retained by Mayflower and becomes a part of the master lease; one copy is sent to the lessor, and a third accompanies the bill of lading and other shipping papers to the accounting department. Mayflower qualifies the leased equipment in States in or through which it is to be operated, unless already qualified therein by the agent. A Mayflower dispatcher assigns the units to particular hauling jobs,

and information pertaining to the equipment is retained on a card while operated in Mayflower's service.

North American, as noted, obtains the use of equipment, under hauling contracts, which are similar to those of Greyvan. The agreements prevent the lessor from transporting for another carrier while the lease agreement is in effect. All equipment, whether owned by North American, an agent, or owner-operator, is dispatched by an employee of North American. Drivers are required to wire the dispatchers from certain specified points. Appended to the driver's daily log is a vehicle inspection report which must be filled out for each 7-day period. Equipment is inspected at regional terminals as well as the home terminal at Fort Wayne.

Responsibilty.—The master lease of Mayflower, and the lease agreements used by United, contain clauses whereby these carriers assume full responsibility as common carriers for the leased equipment while operated in their service. Mayflower considers that its carrier responsibility for any particular movement continues until the leased vehicle is returned to its home terminal. As noted, it carries appropriate insurance covering its liability. United's lease requires the lessor to provide public liability and property damage insurance, as well as workman's compensation insurance on the leased equipment and the showing of United as the coinsured. United also provides limits of $100,000 and $200,000 public liability, and $100,000 property damage insurance, on all vehicles transporting one of its shipments. United requires the agent-lessor to maintain and repair the leased equipment and Mayflower's lessors also bear this expense.

Under North American's hauling agreement, the lessor of the equipment agrees to provide virtually everything except the operating authority. North American provides all necessary billing, supervision, and paper work. It carries the necessary cargo, public liability, and property damage insurance, but the service contract, which is a part of the hauling contract, provides for its reimbursement therefor by the hauling agent. Under the agreements with its noncarrier providers of equipment, North American carries the insurance for the protection of the operation, in respect of which the agreement is made, the cost of which is to be borne by the lessor (referred to as the contractor). Under the agreement with these noncarrier lessors, the employees of the latter are under their control and supervision "subject only to full compliance with Federal and State rules and regulations and the accomplishment of the ultimate objectives of this undertaking." According to its witness, North American considers that it is responsible for a vehicle from the time its movement to a loading point is requested

until the return to the agent's home terminal, but there is no assumption of such responsibility in its hauling contracts. North American maintains a service garage at its headquarters for servicing owner-operator equipment at the expense of the owner.

Mayflower's equipment lease, under which it contracted for additional tractors to handle the mass removal of the aircraft plant employees, hereinbefore referred to, is somewhat similar to the hauling agreement of North American, except that Mayflower provides bodily injury and property damage insurance.

Safety of leased equipment.—All three of the carriers, whose practices have been described above, have comprehensive programs for continuous instruction of employees in safety regulations, and their accident experience with equipment leased from agents has been more favorable than with their company-owned equipment or that of owner-operators. United's ratio of accidents per 100,000 miles was 2.69 with owned equipment and 0.299 with leased equipment in 1947. From July 1947, through September 1948 Mayflower's ratio, on the same basis, was 3.03 on owned equipment and 2.13 on leased equipment. During the same period its company-owned equipment was involved in 6 fatal accidents and 60 personal injury accidents. Its leased equipment had no fatal accidents and was involved in only 15 personal injury accidents. Most of the carrier agents are small companies, their personnel turnover is not great, and their drivers, generally speaking, have had more experience in driving household-goods vans than the hired drivers of the carriers. These national systems pay particular attention to physical examinations of drivers which operate vehicles in their service and require the furnishing of drivers' logs, either directly or to their supervisory personnel. They endeavor to be careful in inspection of the vehicles and in reporting violations of excess driving hours and accidents.

Law violations.—The three carriers claim to have had excellent experience in law compliance by owners and operators of leased equipment. Mayflower reported three instances where drivers of such equipment had performed unauthorized transportation. The guilty parties were admonished and the offenses were not repeated. Mayflower takes the position that it would not be responsible in such cases, whereas if its own drivers were involved it would be held responsible. North American reported an instance where an agent issued a bill of lading for a shipment and participated in the revenue without authorization from North American and also failed to remit collections. In another instance an agent performed transportation in North American's name and under its billing and failed to report the shipments or remit

North American's portion of the revenue. This agent had been twice convicted of unauthorized transportation in interstate commerce and was permanently enjoined from such operation. The two agents' agreements were terminated. United disclaims responsibility for such violations by the drivers of leased vehicles.

Carrier-agents.—The evidence on behalf of the three national household-goods carrier systems is corroborated by that of their carrier-agents. One of Mayflower's agents, located at Cincinnati, Ohio, and having authority to perform transportation in 20 States, has been in business since 1923 and an agent of Mayflower since 1933. Its capital investment is about $200,000 and it owns four tractor-trailers and five trucks, all of which are under lease to Mayflower.

For its long distance hauling, this carrier employs 10 drivers whose periods of service range from 4 to 22 years and average about 7 years. They report accidents while transporting shipments for Mayflower to the agent carrier which relays the information to Mayflower. The agent receives duplicates of all daily drivers' logs, and copies of doctors' certificates covering all its drivers, whether used in local or Mayflower service, are sent to Mayflower and are renewed annually. Its equipment in Mayflower's service is inspected at factory branches of the manufacturer and by its own mechanics. Until 1948 the carrier had one accident in 12 years. In 1948 it had two accidents. No accident in its local hauling operations amounting to more than $25 damage had occurred in 6 years.

The peak season in its local hauling operations is from April through September, whereas the long-distance peak season is from June through November. Because of these variances, the leasing of its equipment to Mayflower affords the maximum utilization possible and is responsible for about 35 percent of its revenue. The leasing arrangement permits the employment throughout the year of the drivers, thereby enabling it to retain experienced personnel. If required to discontinue leasing to Mayflower, it would have to discharge three or four of its drivers.

A carrier-agent which leases equipment to United and is domiciled at Rutherford, N. J., has nonradial authority in 8 States and radial authority in 25 States east of the Mississippi River. It has an investment of almost $1,000,000 in trucks and facilities and has under lease to United seven tractors, six trailers, and seven trucks. All of its drivers of equipment leased to United are its employees . Their experience ranges between 15 and 20 years. Its leasing arrangements with United have enabled it to handle considerably more traffic, and the revenue therefrom represents about one-third of its total operating

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revenues. Discontinuance of its leasing arrangements would necessitate discharging about five of this carrier's experienced drivers.

Another carrier-agent for United, domiciled at Washington, D. C., and authorized to operate between that point and 17 surrounding States, has made 4 tractor-trailers and 3 trucks available to United under lease arrangements. The bulk of its local moving operations occur in May and June, whereas the long-distance moving peak season is in September, enabling it to make its equipment available to United without interfering with its own operations. About 30 percent of its hauling revenue is derived from equipment leased to United, and if required to discontinue such arrangements, it would have to dismiss some of its drivers because its regular operations would not warrant keeping them in its employ.

The testimony of carrier-agents for North American respecting the benefits they derive from leasing equipment to that carrier is substantially the same as that of the carrier-agents of Mayflower and United.

American Van Lines, Inc.—The president of this household-goods carrier, which is domiciled in New York City and has authority to operate in 30 States, also is president of Independent Movers and Warehousemen's Association, Inc., and executive vice president of Atlas Van Lines, Inc., of Chicago. He was of the opinion that while leasing accounted for 75 percent of the household-goods carriers' hauling business and was a vital element thereof, it was resorted to by carriers to avoid the appearance of unauthorized brokerage and to overcome the limitations of radial certificates. Under some of these certificates, a carrier is limited to a few miles around the city where it is domiciled, although it may be authorized to operate between that point and 10 or 15 States. On completing the out-bound haul to one of these States, such a carrier can handle a return shipment only to its base territory, and this restricts its opportunity of obtaining return shipments.

American Van uses trip leases in operations beyond its authorized territory, but the witness favored the prohibition of this practice and the restriction of equipment to territory which both the lessor and lessee carrier are authorized to serve. The witness was further of the opinion that the trend toward Nation-wide systems of household-goods carriage necessitated some form of permanent lease, which should be filed with this Commission and made subject to the Commission's approval. He supported the interchange or diversion of shipments of household goods, practices which the Household Goods Carriers' Conference apparently believe to be impracticable.

An independent household-goods carrier domiciled at Louisville, Ky., whose authority embraces 34 States, has operated successfully for 45 years without resorting to leasing and is opposed to the practice in any form. The growth of the large national systems, made possible through leasing, in the opinion of its president, is driving the smaller, independent carriers out of business.

COORDINATED RAIL-MOTOR SERVICE

Certain railroads, which have authority, or are seeking authority to perform motortruck operations along their rail lines in the transportation of railroad freight between rail stations, perform the service in vehicles leased from others, who also furnish the drivers, under long-term contracts or continuing arrangements. In the proceedings in which certificates for this type of operation were granted, copies of these contracts were considered. Some of the arrangements subsequently have been revised. Generally the vehicles are leased from the Railway Express Agency, Inc., of New York City, Columbia Truck Leasing, Inc., of St. Louis, and Motor Express Rentals Corporation of Chicago.

In general the terms of the contracts between the railroads and their lessors are as follows: The lessor is required to furnish competent and qualified drivers of the leased vehicles, which are the employees of the lessor and not the employees of the railroad. The railroad may request removal or discharge of an objectionable driver. Representatives of the railroad prescribe the schedules, routes, records, and methods of handling freight, and only railroad employees deal with the public. The vehicles furnished must meet railroad specifications, and be maintained in good working order, and the lessor is required to provide public liability and property damage insurance coverage. The name of the railroad is painted on the vehicles, which must conform to safety regulations of the Commission and State and Federal laws and must be operated solely for the purpose of transporting railroad freight, or that which the railroad directs to be transported. The lessor is required to file accident and hours-of-service reports and to comply with safety regulations.

Agreements for the lease of equipment, with drivers, by railroads from the Railway Express Agency generally provide for compensation on a cost basis, plus interest on investment, with depreciation charges based on mileage. Vehicles are obtained from other lessors with drivers at a uniform rate per mile whether loaded or empty.

The railroads which operate leased equipment in the manner described are opposed to having applied to their motor-vehicle opera-

tions any requirement that drivers of leased vehicles be the employee of the carrier. The railroads contend that this requirement would increase the cost of their substituted service because of differences in taxes on railroad wages; that their lessors have developed experienced and qualified personnel to operate and maintain the particular types of vehicles required by the railroads and are reluctant to lease the equipment unless accompanied by their own drivers; and that the arrangements give the railroads adequate control over the operations without actually employing the drivers. They seek exemption on the ground that the Commission has a continuing and constant control over the rail-motor service of the railroads through the conditions attached to the cerificates which reserve the right to impose further conditions and restrictions, and that the railroads have not been shown to have been guilty of any abuses or law violations in utilizing leased motor-vehicle equipment.

As railroads do not hold title to the leased motor-vehicle equipment, the effect of limiting leased equipment to a percentage of the total would be to eliminate entirely their leasing arrangements, and they oppose this requirement. The Illinois Central Railroad contends that ownership of motor vehicles by railroads is unnecessary to insure financial responsibility. It leases under equipment trusts most of its rail equipment. The Louisville and Nashville Railroad Company owns no vehicles and prefers to lease the few required in its relatively small motor operation.

Both Atlantic Coast Line Railroad Company and the Express Agency would be hampered by proposed rule 2a (4), if the rule were construed to prevent the agency from transporting railroad express traffic in the same vehicles in which railroad traffic is transported. The railroad is obligated to haul express traffic between its stations, and some such traffic is transported by the Express Agency in over-the-road truck service for the convenience of the railroads. The railroad also contends that it would be an undue burden to require it to give a receipt each time a truck made a trip. The Illinois Central considers it desirable to be able to renegotiate contracts frequently. Its contract with the Express Agency runs for only 90-day periods.

These carriers suggest the handling of plans for the operation of leased equipment in informal proceedings.

The New York Central Railroad Company contends that the use of leased vehicles in its substituted service is merely auxiliary and supplemental to operations subject to part I of the act, and that this type of operation repeatedly has been recognized by this Commission

as a different type of motor-carrier operation, and has been so treated in the various proceedings in which such service has been approved. Thus, in *Kansas City S. Transport Co., Inc., Com. Car. Application*, 10 M. C. C. 221, 237–238, it was said:

> the conclusion is warranted that there is a public need for this coordinated service, that it is a new and different character of service which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities.

In *Willett Co. of Ind., Inc., Ext.—Fort Wayne-Mackinaw City*, 42 M. C. C. 721, it was found that the service of the applicant therein (between stations of the Pere Marquette Railroad) would be of a different character from that performed by motor carriers generally. The New York Central points out that the Supreme Court confirmed this finding in *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60.

Express service.—The Express Agency, which provides vehicles under lease for many of the railroad substituted motor operations, points out that one of the factors emphasized in granting railroads authority to perform substituted motor service in the handling of less-than-carload freight is the reduction in operating costs thereby effected, and that this purpose would be defeated to a large extent if the rail carriers were required to own their own vehicles and employ their own drivers.

Railroad express traffic is transported for the agency by star route mail carriers, which furnish and drive the vehicles in which express traffic is handled. In *Railway Exp. Agency, Inc., Extension—Waggoner, Ill.*, 44 M. C. C. 771, it was concluded that the Express Agency would have complete direction and control over the vehicles used which were furnished by the star route operators; that such vehicles would be operated under the Express Agency's full responsibility to the shipper and the public generally, and that the operations would be those of the Express Agency as a common carrier by motor vehicle. The Express Agency contends that the owner-operator agreement considered and approved in that proceeding is not of the type contemplated in instituting this investigation, and that operations of the Express Agency through star route mail carriers should be exempted.

The Express Agency also conducts certain express operations in the States of Indiana, California, and Virginia through wholly owned subsidiaries, because the laws of these States require that certain operations be conducted by domestic corporations. In these instances

the vehicles are furnished by the parent company, a Delaware corporation, and payment by the subsidiaries is on a cost-plus basis. Generally the drivers are employees of the subsidiaries, except in instances where local conditions and union affiliations make it desirable that the drivers be employees of the parent company. These subsidiaries transport express traffic in interstate commerce under the billing of the parent company and certain traffic under railroad billing. In some instances the vehicles so leased to the subsidiary, but not used by it, are utilized for pickup and delivery for local service of the parent company. All dealings with the public are by the parent company.

PRIVATE CARRIERS AND SHIPPERS

The members of the Aircraft Industries Association produce approximately 90 percent of all aircraft and aircraft parts in the United States. The members of the association generally lease trucks because of a need for expedited service which the carriers for hire are unable to provide. They contend that any requirement that all marks of ownership on leased equipment be obliterated is burdensome. They feel that the obligation to repaint the equipment at the end of a lease would impose a needless expense upon those who lease vehicles from carriers for short terms. If regulations adopted as a result of this proceeding make it too onerous to lease vehicles from regulated for-hire carriers, the members of the association will be forced to lease vehicles from persons which are not under the jurisdiction of this Commission.

United Aircraft Corporation, a member of the association, handled less than 1 percent of its traffic in leased vehicles in 1947, and most of its leases, on a time basis, are for a minimum period of 6 months. It provides its own drivers and insurance and pays the operating expenses. Its only reason for leasing vehicles from carriers is to obtain a specialized service, which may entail continuous hauling for a 24-hour period. It installs special racks in the vehicles. The line-haul vehicles of common carriers are best suited for its purpose. It leases from carriers which also haul for it as common carriers. As it occasionally obtains equipment on very short notice, and may need to use it only for a week, it feels that it should not be compelled to execute a long-term lease.

The Manufacturing Chemists Association was represented by a witness who is an official of Merck & Company, Inc., of Rahway, N. J., a member of the association. Members both ship by motor carrier and also operate motor vehicles as private carriers. They are opposed to any regulations which would increase the cost of their

transportation. The company represented by the witness operates its own trucks and also leases additional vehicles without drivers to handle about 10 percent of its private-carrier traffic from authorized carriers. These leases are generally on a one-way or round-trip basis. The leased equipment is employed principally for short hauls less than 75 miles from the main plant. It is unable to obtain vehicles except from authorized carriers as there are no truck-leasing companies at Rahway.

DISCUSSION AND CONCLUSIONS

The necessity for regulation.—The evidence herein contains many examples of violations of the act and of the Commission's regulations thereunder in the present practices of authorized carriers in utilizing leased equipment. As we have previously indicated, our safety regulations are of paramount importance in administering the motor provisions of the act and their enforcement is one of the most important duties imposed on this Commission. Even in instances where the leasing is between authorized carriers, but embraces the services of drivers as well as vehicles, it appears that the lessee does not always obtain certificates of the driver's physical examination in conformity with the safety regulations. In the household-goods moving industry the responsibility for this matter in many instances is left entirely up to the lessor-agents, although it appears that the latter in most instances endeavor to discharge the duty satisfactorily. The greatest threat to observance of the safety regulations occurs in the leasing by carriers of general commodities of owner-operators on a single-trip basis, where the physical examination of the driver is frequently dispensed with because the equipment is required on short notice. It also appears that in such instances the lessees do not have sufficient time properly to inspect the leased equipment in order to ascertain if it meets the safety regulations. It appears difficult also in such instances for the lessees to enforce the regulations relating to maximum driving time and drivers' periods of rest. In many such instances, a carrier has accepted an operator's statement as to his hours of service during the preceding 24 hours and 7 days. Instances have been noted herein where owner-operators have driven for 16 to 76 hours without adequate rest. It is apparently true that in many instances these matters are concealed by falsification of the driver's log, but it also appears that in other instances the violations are undetected by reason of the failure of the carriers to require the owner-operators to submit their logs prior to starting on a trip. Although many of the carriers which utilize trip leasing to a limited extent endeavor to ascertain whether the owner-operator has complied with the hours-of-service

regulations, it is more difficult to make the determination in such cases than where an employee driver is concerned.

There has been noted a number of apparent violations of the act, aside from the safety regulations, that occur in the present practices. These involve transportation beyond the territory of the authorized lessee-carrier by both owner-operators and authorized carriers, accompanied by later attempts to validate the transportation through a trip lease.

Owner-operators are generally engaged in providing a constituent part of the service of an authorized carrier, and can engage in the transportation of commodities in interstate commerce, other than those specified in section 203 (b) (6) of the act, only under the authority of the carrier. When they serve different carriers under trip leases, and have completed a haul for one carrier, until their services are again contracted for by another carrier, they are not under the responsibility of any authorized carrier and the public may not be protected by any insurance of any carrier. *Costello* v. *Smith*, 179 Fed. (2d) 715. In such instances the opportunity is presented for them to solicit freight on their own account while claiming that their vehicles are under lease to an authorized carrier. Unlawful transportation of this kind is difficult of detection in the absence of regulations governing leasing practices.

Authorized carriers can, and it appears they sometimes do, violate the act in permitting other authorized carriers to traverse their routes or operate in their territories under the guise of equipment leases when actually no lease exists, and the ostensible lessee-carrier merely accepts a small percent of the revenue as consideration for permitting the ostensible lessor to operate over the lessee's routes or in the latter's territory. The illegality of arrangements of this kind has been pointed out in both Commission and court proceedings. See *Interstate Dispatch, Inc., Extension—Springfield, Ohio*, 47 M. C. C. 863, and *United States* v. *Steffke*, 36 Fed. Supp. 257. In the latter case the court said:

> A carrier cannot do indirectly what he cannot do directly. * * * If a carrier leases his vehicle to another carrier or to a shipper, he should do so under such terms and conditions as will make the operations conducted by such vehicle the operations of such other carrier or shipper; otherwise the operations will be his.

We believe that in no other proceeding in which the practices of motor carriers have been under investigation has there been such general admission by all parties, including those opposed to regulation, that violations of law and of this Commission's regulations exist. The spokesman for the Household Goods Carriers' Conference con-

ceded violations on the part of 10 percent of its members. The chairman of A. T. A.'s truck leasing committee was familiar with every one of the 77 examples of practices discovered in the Bureau's informal survey, and the Florida carriers, although favoring the continuance of trip leasing, as stated, are so alarmed over conditions prevailing with respect to practices at the present time that they suggest special regulations therefor. An official of one of the independent household-goods carriers expressed the view that the purposes of regulation had been frustrated and regulation "has become almost a joke," through certain of the leasing practices.

We conclude that violations of this Commission's safety rules and of the act considered herein are largely due to the lack of reasonable regulations which would require assumption of legal responsibility on the part of authorized carriers, and proper control over the operation of leased equipment, particularly equipment accompanied by drivers. We do not agree with those opposed to any regulations, or at least regulations no more restrictive than recommended by A. T. A., that the violations could be eliminated through vigorous prosecutions. Many of the present practices which might appear to be subterfuges have not been prescribed as such, and undoubtedly they will continue until they are defined and covered by regulations making clear their illegality. Among the necessary elements in criminal prosecutions for violations of the act or this Commission's regulations are knowledge and willfulness. The doubt as to the existence of these elements should largely be obviated by regulations indicating what constitutes legal leasing. Much would be accomplished if such regulations went no further than to require that leases of equipment by authorized carriers be in writing, whereby the lessee assumed all legal responsibility to the shippers, this Commission, and the public during the period covered by the lease.

It is urged by many of the parties that the violations of the act and of the safety regulations occurring in the leasing practices are committed by such a relatively small percent of authorized carriers that regulations should not be adopted tending to disrupt the present practices of carriers which are meticulous in conforming to the act and to the regulations. The important fact developed in this investigation is that the present unregulated practices permit and facilitate violations. It is our duty to take steps to eliminate opportunities for these violations so far as possible.

One of the major issues herein, as previously indicated, is whether any rules and regulations that may be adopted should provide exemptions therefrom for any carrier or group of carriers. The examiner

proposed that leased equipment, unless leased from another authorized carrier, should be driven by an employee of the lessee, but to exempt from this requirement the Railway Express Agency, Inc., in its motor transportation of railroad express traffic, and railroads which perform substituted motor service in the transportation of railroad freight between rail stations on railroad billing. The theory of the proposed exemption is that such operations are essentially those of the railroads or the express agency, performed under plans which this Commission or the courts have passed upon, and that the described requirement would impose drastic changes in their method of operation. Carriers represented by the Household Goods Carriers' Conference and the heavy haulers also seek exemption on the ground that their operations are entirely dissimilar from those of other common carriers. We have fully considered the arguments in favor of such exemptions and do not believe that the requests therefor should be granted. Any reasonable regulations should not impose too great a burden upon any authorized carrier. The rail carriers, as well as the express agency, in their motor operations, are subject to regulation as motor carriers.

Questions of law.—Despite the general admissions of violations of law and Commission regulations by many of the parties hereto, and the proposals of specific rules on the part of some of them, other than the Bureau, our authority to prescribe any rules and regulations herein is challenged by many of the parties.

The first challenge to our jurisdiction raised is principally a procedural question. Some of the parties contend that the burden of proof under section 7 (c) of the Administrative Procedure Act has not been met. Section 7 (c) provides in part as follows:

> (c) Evidence.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portion thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.

There were a number of advocates of the adoption of rules and regulations to govern the leasing and interchange practices of the respondents. So that the parties would have tentative rules to which to direct their evidence, the Bureau provided a set of tentative rules in the notice of rule making which was served in accordance with section 4 (a) of the Administrative Procedure Act.

As our report herein indicates, we have received the assistance of many in developing a record containing the facts upon which reasonable rules may be prescribed. Some of the parties assumed the bur-

den of proof with respect to some proposed rules and not others. In our view, the record is sufficiently ample to permit the prescription of reasonable rules, and the arguments relative to the burden of proof have no weight.

The second challenge to our jurisdiction raises the question whether power has been delegated to this Commission under the act to adopt rules and regulations governing these practices. A. T. A., whose proposed rules are directed primarily to such matters as assumption of responsibility by the lessee, and proper identification of leased equipment, contends that we have no jurisdiction over contractual relations between carriers and lessors of equipment to an extent that would support rules more restrictive than it proposes. The Household Goods Carriers' Conference, although conceding that we have authority to prescribe rules for securing safe and adequate service to the public, equality between shippers, and other matters affecting the public interest, argues that:

> Regulatory bodies may not interfere with the management of a carrier's business to the extent where such regulation has the effect of unreasonably interfering with the province of management.

Our regulation of motor carriers as well as rail carriers, water carriers, and freight forwarders is subject to the national transportation policy, which commands the fair and impartial regulation of all modes of transportation subject to the provisions of the act, the promotion of safe, adequate, economical, and efficient service, the fostering of sound economic conditions in transportation, and the prevention of unfair or destructive competitive practices among carriers:

> all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of commerce of the United States, of the Postal Service, and of the national defense. All the provisions of this act shall be administered and enforced with a view to carrying out the above declaration of policy.

We have long recognized that in carrying out what we conceive to be the legislative intent we cannot exercise powers which are neither expressly delegated nor reasonably necessary to effectuate powers that are expressly delegated. *Kansas City S. Ry. Co.* v. *Kansas City Term. Ry. Co.*, 211 I. C. C. 291, 304. The converse of this rule, of course, is that we have authority that can reasonably be inferred from the provisions of the act, in order to effectuate powers expressly delegated thereunder, and in numerous proceedings this Commission has found that its jurisdiction reasonably could be inferred in respect of powers not specifically mentioned in legislative grants. Among such proceedings are *Contracts of Contract Carriers*, 1 M. C. C. 628.

in which it was found that this Commission has authority to require motor contract carriers of property to perform only transportation under contracts or agreements in writing and which conform to certain prescribed essentials; *Bell Potato Chip Co.* v. *Aberdeen Truck Line*, 43 M. C. C. 337, wherein it was concluded that despite the absence of specific provision therefor, the Commission was authorized to determine the reasonableness of rates charged in the past in aid of an action in court to recover damages: *Investigation of Seatrain Lines, Inc.*, 206 I. C. C. 328, (also related proceedings, *Seatrain Lines, Inc.* v. *Akron C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199, and *Hoboken Mfrs. R. Co.* v. *Abilene & S. Ry. Co.*, 237 I. C. C. 97, and 248 I. C. C. 109), affirmed by the Supreme Court in *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, in which it was found that where through routes existed between rail and water carriers the Commission could require the rail carriers to interchange cars with the water carriers; *Keith Ry. Equipment Co.* v. *Assn. of American Railroads*, 274 I. C. C. 469, in which it was found that this Commission has jurisdiction to pass on the reasonableness of compensation paid for the use of freight cars owned by nonshippers in the past as well as for the future; and *Transportation Activities, Brady Transfer & Storage Co.*, 47 M. C. C. 23, (sustained 80 Fed. Supp. 110, affirmed 335 U. S. 875), wherein criteria were set forth whereby regular- and irregular-route operations may be distinguished. In all these proceedings, and in many others, in which powers have been exercised which are not specifically spelled out in the act, the Commission, as an administrative agency, has fulfilled its obligation to fill out the details of the regulation committed to it, long recognized as a prerogative of such agencies. In sustaining the Commission's order in the *Seatrain* case, *supra*, the Supreme Court, at page 616 of its report in *United States* v. *Pennsylvania R. Co.*, *supra*, said:

> There is no language in the present act, which specifically commands that railroads must interchange their cars with connecting water lines. We cannot agree with the contention that the absence of specific langauge indicates a purpose of Congress not to require such interchange. True, Congress has specified with precise language some obligations which the railroads must assume. But all legislation dealing with this problem since the first act in 1837, 24 Stat. 379, has contained broad language to indicate the scope of the law. The very complexities of the subject have necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action; and in the light of the Congressional purposes to foster an efficient and fair transportation system.

The parties who argue that we lack jurisdiction to adopt rules similar to the proposed rules, stress the fact that we can exercise implied powers only in order to effectuate powers that are expressly delegated. In that connection they say that the existence of any implied power to regulate the practices under consideration is negatived by certain decisions of the Supreme Court. More particularly these parties rely on certain dicta taken from the context of the opinions, or upon decisions dealing with the exercise of administrative authority in respect of matters for which the act specifies certain standards. They rely heavily upon certain language in *General American Tank Car Corp.* v. *El Dorado Term. Co.*, 308 U. S. 422. In that case a corporation, not affiliated in any way with a railroad and engaged in the business of leasing tank cars to railroads and shippers, leased a number of such cars to a shipper at an agreed rental. The shipper, in turn, made the cars available to the railroad for transporting the shipper's products. The railroad's tariff rules provided for the payment of an allowance to the owners of such cars. Under the lease agreement the Tank Car Company was to collect and credit the allowance to the shipper. The allowance exceeded the agreed rental, but for a time the Tank Car Company collected it, deducted the rental, and paid over the balance monthly to the shipper. After the Commission's decision in *Use of Privately Owned Refrigerator Cars*, 201 I. C. C. 323, to the effect that payments in such circumstances, which exceeded the agreed rentals, amounted to rebates, the Tank Car Company, after collecting the allowance and deducting the rental, kept the balance and refused to pay it over, on the ground that to do so would constitute rebating. The shipper sued in Federal district court. The district court agreed with the Tank Car Company, but the circuit court of appeals permitted a recovery upon the ground that payment of the allowance was authorized by section 15 (13) of the act, the rates of allowance had been approved by this Commission, and provided in the rail tariffs, and the Tank Car Company was merely an agent of the shipper in the collection.

The Supreme Court held that the district court had jurisdiction but that it should not have adjudicated the rights and liabilities of the parties in the absence of a decision by this Commission respecting the validity of the practices in the light of the act. There then follows the dictum of the court upon which certain of the parties opposed to regulation of leasing practices rely:

> Freight cars are facilities of transportation, as defined by the act. The railroads are under obligation, as part of their public service to furnish these facilities upon reasonable request of a shipper, and therefore have the exclusive right to furnish them. They are not, however, under obligation to own such cars. They may, if

they deem it advisable, lease them so as to be in a position to furnish them according to the demand of the shipping public and, if the carriers do lease cars, the terms upon which they obtain them are not a subject of direct control by the Interstate Commerce Commission. * * * The lessor of such cars to a railroad, however, is not of itself a carrier or engaged in any public service. Therefore, its practices lie without the realm of the Commission's competence.

The Court, however, also went on to state that the practice of car companies in leasing cars to shippers could not modify the requirements of section 15 (13), which governs the payment of allowances for private cars, and invests this Commission with authority to find and declare what allowances are reasonable; that the fact the car company acted as collecting agent for the shipper did not take the case out of this Commission's jurisdiction. "The inquiry into the lawfulness of the practice is one peculiarly within the competence of the Commission."

In this case the Court also referred to *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, involving the validity of a Commission order directing a noncarrier, The Armour Car Lines, to supply certain information in an investigation into the practices of rail carriers in granting allowances when they used the cars of noncarriers and shippers. In holding the order invalid on the ground that the Armour Car Lines was not subject to the Commission's jurisdiction, the Court nevertheless held that the practices of the railroads in using Armour refrigerated cars were subject to the Commission's jurisdiction. The Court said:

The control of the Commission over private cars, etc., is to be effected by the control over the railroads that are subject to the act. The railroads may be made answerable for what they hire from the Armour Car Lines, * * *.

It thus appears that in the very reports in which the Court held that the Commission lacked control under part I over noncarrier lessors of equipment, it emphasized the Commission's control over the equipment through its regulation of the railroads.

Other authorities relied upon by those who challenge our jurisdiction in this proceeding, as stated, are reports or excerpts therefrom in which the issues revolved around the exercise of powers by this Commission in respect of matters, concerning which the act lays down certain standards to be observed by this Commission. Typical of these are *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, which dealt with the standards to be observed in determining rights under the "grandfather" clauses, in which the Court said:

Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen.

Some of the parties argue that in adopting the proposed rules or other similar rules we would be adopting a policy rather than enforcing the provisions of the act. The adoption of a policy, they say, is a course not within the powers delegated to the Commission. We do not agree that this proceeding is solely one of policy rather than enforcement of regulation committed to this Commission. However, we may properly apply general policies consistent with the act. In *Eastern Central Assn.* v. *United States*, 321 U. S. 194, the Supreme Court said:

> In returning the case we emphasize that we do not question the Commission's authority to adopt and apply general policies appropriate to particular classes of cases, so long as they are consistent with the statutory standards which govern its action and are formulated not only after due consideration of the factors involved but with sufficient explication to enable the parties and ourselves to understand with a fair degree of assurance why the Commission acts as it does.

Other Court reports relied upon by the opponents of regulation herein involve what might be characterized as attempted enlargements of statutory standards by regulation. This was the view taken of the Commission's action in denying a transfer of operating rights under section 212 (b) of the act because not in accordance with its transfer rules in *Stearn* v. *United States*, 87 Fed. Supp. 596 (decided July 12, 1949). In this connection there is also cited *Manhattan Co.* v. *Commissioner of Internal Revenue*, 297 U. S. 129, which involved the validity of an amended treasury regulation prescribing the method for determining the loss for income tax purposes in a sale of stock. In holding the amended regulation applied by the Commissioner of Internal Revenue to be just and reasonable, and in accord with the legislative intent, and that a prior regulation, in effect when the stock transfer took place, did not apply, the Court made an observation, which is quoted by the statutory three-judge court in the *Stern* case, *supra*, with approval as follows:

> The power of an administrative officer or board to administer a Federal statute and to prescribe rules and regulations to that end is not the power to make law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. The regulation which does not do this but operates to create a rule out of harmony with the statute is a mere nullity. * * * And not only must a regulation, in order to be valid, be consistent with the statute but it must be reasonable. *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 514.

Without considering further in detail the many court cases along the same line cited by the opponents of regulating the practices under consideration, it is sufficient to state that the holdings therein are relevant to this proceeding only as supporting the fundamental prop-

osition that such rules and regulations as we may adopt in administering the act must be consistent therewith and reasonable. *United States* v. *Resler*, 313 U. S. 57.

Many of the parties who have filed exceptions to the proposed rules, while agreeing that our power to regulate motor carriers is extensive, contend that nowhere in the act can be found any delegation of authority, either expressed or implied, over the practices under consideration, or any statutory warrant for subjecting them to regulation. They review numerous provisions of the act vesting specific powers in the Commission, including the provisions cited in the order instituting the investigation, and, in addition, section 204 (c), and profess to find therein no legislative grant of authority to regulate the practices of the respondents in augmenting or interchanging equipment. The Household Goods Carriers' Conference contends that section 202 (a), which confers general regulatory jurisdiction upon the Commission, is intended merely to state generally the applicability of the provisions of the act and confers no specific powers. With this we do not agree. Certainly the language used, while general in tenor, is clear and explicit in respect of the scope of regulatory power conferred, and in that respect goes beyond the general regulatory powers in respect of rail carriers in section 1 of part I of the act. Section 202 (a) provides as follows:

> The provisions of this part apply to the transporation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transporation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

Under this proviso the regulation of transportation [of property by motor carriers engaged in interstate commerce], which elsewhere, [section 203 (a) (19)], together with "services," is stated to include "all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership, or of contract, express or implied," and of the procurement thereof, and the provision of facilities therefor, is vested in the Interstate Commerce Commission. Stated somewhat differently the section vests in us the regulation of transportation of property by motor carriers in interstate or foreign commerce. Transportation includes all vehicles operated by, for, or in the interest of any motor carrier, irrespective of ownership, or contract, express or implied. In addition we are given regulation of the procurement of such transportation. Unless an unduly strained and narrow construction is to be given to "procurement," it must include methods of procurement, and since transportation includes vehicles, we have au-

thority to regulate the methods of procurement or vehicles used by the carriers subject to our jurisdiction. To find otherwise is to treat the language as superfluous and to fail to accord effect to the legislative intent therein expressed.

We believe there is good reason for holding that it was Congress' intent, that regulation of provision of facilities for motor carrier transportation, be vested in this Commission, as well as regulation of the transportation, and of the procurement of transportation. Unless so construed, there is irrelevantly added to a clause dealing with regulation, in section 202 (a) the phrase the provision of facilities for such transportation is vested in the Interstate Commerce Commission. We do not believe it necessary to adopt this construction, however, in concluding that we have authority reasonably to regulate leasing and interchange practices.

As previously noted, the practice of conducting operations in the vehicles of others by those claiming to be motor carriers of property antedates the Motor Carrier Act, 1935. When the provisions of that act were first under consideration, the practice of hiring motor vehicles to be driven by the owner thereof or his employee was considered to be brokerage; the person hiring the equipment was sometimes referred to as a motor transportation agent, and the owner-operator as the carrier. See Regulations of Transportation Agencies (S. Doc. 152, 73d Cong., 1st sess.). In hearings upon the bill which became the Motor Carrier Act, 1935, doubt was expressed as to the legal status of the parties to these hiring arrangements. There was a question whether the owner-operators would be the carriers, and those hiring their services or leasing their equipment would be brokers or freight forwarders, or whether the latter would be the carriers and the owner-operators their agents. See Hearings Before the Committee on Interstate Commerce, U. S. Senate, 74th Congress, 1st sess., S. 1629, pages 97, 98, 99, 155, 156. The language respecting the procurement of, and the provision of facilities for transportation by motor carriers in interstate commerce, contained in section 202 (b) of the Motor Carrier Act, 1935, was added by the Senate committee, and, in explaining the addition, the chairman of the committee stated (79th Congressional Record, Page 5650):

> Paragraph (b) * * * Explains the application of the bill and vests jurisdiction in the Interstate Commerce Commission. The Committee amendments broaden the statement to include the operations of brokers which are regulated by later provisions of the bill, and of persons who as lessors of vehicles or otherwise may engage in transportation as common or contract carriers.

It is further argued by those opposed to regulating these practices, that even if regulatory authority is conferred upon us by the act, the

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exercise thereof might be unconstitutional, as tantamount to the taking of property without due process, or, what amounts to the same thing, compelling the respondents to incur needless expense. Among the alleged authorities cited in this connection is *Great Northern Ry. Co.* v. *Minnesota*, 238 U. S. 340. That case involved the constitutionality of an order of the Minnesota Railroad Commission, under a Minnesota statute, which required a railroad to establish public scales at a point in Minnesota, comparable to scales which had been established at two other points. The only language therein relied upon by respondents is the following:

> A railroad's possessions are subject to its public duty, and, within charter limits, like other owners of private property, it may control its own affairs.

This statement was made in connection with a contention by the railroad that, conceding discrimination in maintaining the scales at the two other points, the State commission acted arbitrarily in attempting to eliminate it by ordering the installation in question instead of permitting removal of the other two scales. The quoted statement should be considered in connection with the following language preceding it:

> It by no means follows, simply because a railroad voluntarily supplies a convenience at some stations which attract trade, that it can be commanded positively to do likewise at other places along the line.

As any regulations that may be prescribed herein are intended to relate directly to the respondents' performance of their obligations to the public, we fail to see the pertinence of the case cited, or other similar cases dealing with constitutional questions.

Sections 208 (a) and 209 (b) of the act also are cited as precluding us from prescribing regulations respecting the augmenting of equipment by the carriers. Both sections contain a proviso, relating respectively to common and to contract carriers, to the effect that no "terms, conditions, or limitations" to be attached at the time of the issuance, and from time to time thereafter, to certificates of common carriers and permits of contract carriers, "shall restrict the right of the carrier to add to his or its equipment and facilities," as the development of the business and to the demands of the public shall require. It is argued that if any rules that may be prescribed should have the result of restricting a carrier's use of nonowned equipment in any fashion, we would be accomplishing indirectly that which we are forbidden to do by the provisions referred to. This clearly is a specious argument, which could be raised against any regulations that might be prescribed in respect of any phase of carrier activity. Sections 208 (e) and 209 (b) cannot be construed so as to nullify other pro-

visions of the act. Those who urge their application herein overlook the fact that our authority to impose restrictions in operating authorities against certain types of equipment has been sustained. See *Campus Travel, Inc., Common Carrier Application*, 43 M. C. C. 421, and *Crescent Exp. Lines, Inc.*, v. *United States*, 320 U. S. 401.

Although authority to regulate interchange practices of motor common carriers is not clearly set forth in the act, it would appear that such authority is a necessary concomitant of the authority to enforce the provisions of part II relating to such carriers. Common carriers of property do not have the duty of establishing through routes and joint rates with other such carriers as do common carriers of passengers by motor vehicle; but they have the privilege of establishing such routes and rates, and, under section 216 (c), in the case of joint rates, it is the duty of the carriers parties thereto, to establish just and reasonable regulations and practices in connection therewith. Among the other duties of common carriers stated in section 216 (b) is to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to, among other matters, "the facilities for transportation and all other matters relating to or connected with the transportation of property in interstate or foreign commerce." We conclude that our power to enforce this duty is adequate to embrace the practices of the carriers of property relating to the interchange of facilities over through routes that are voluntarily established, in order to prevent unlawful extensions of operating authority and other violations of part II, that would be possible under the cloak of purported interchange, as well as under the guise of leasing.

We have referred to the importance which Congress attached to the safety provisions of part II of the act. Section 204 of the act expressly provides that it shall be our duty to regulate common and contract carriers as provided therein and to that end we may establish reasonable requirements with respect to qualifications and maximum hours of service of employees, and safety of operation and equipment. The evidence in the instant record establishes that our present safety rules should be strengthened by further reasonable requirements with respect to the use by common and contract carriers of property of equipment not owned by them in order to promote safety of operation and equipment. It is our duty to prescribe such further reasonable requirements.

Having concluded that regulation of these practices is vested in us, we have no doubt that authority to prescribe rules giving effect to

such regulation is conferred by section 204 (a) (6) of the act, which gives the Commission authority:

> To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration;

Those who challenge our jurisdiction argue that this section is merely procedural and comparable with sections 12 (1), and 17 (3), of part I. The latter section specifically relates to procedure before this Commission. Section 12 (1) states generally the authority of the Commission to enforce and execute the provisions of part I, but grants specific powers thereunder, in contrast to the broad authority conferred by section 204 (a) (6). See *Contracts of Contract Carriers*, *supra*. As previously noted, our authority under this section was recognized by the Supreme Court in *United States* v. *Resler*, *supra*. Of course, as the Court stated therein: "Undoubtedly the power to make regulations is not unlimited. * * * And, also, regulations to be valid, must not only be consistent with the statute but must be reasonable." In that light we shall examine the pertinent objections of the parties to the proposed rules, and suggested improvements therein.

No one seriously contends that we could prohibit all leasing of equipment by carriers, or restrict it to a fixed percentage of the number of vehicles owned, alternatives in the order of investigation. Such drastic remedies are not necessary, even if within our power to impose.

Rules. Proposed rule I—Definitions.—The Bureau points out that "and" should be substituted for "or" in the second line of proposed rule I (b), *Equipment*, so that the remainder of the sentence after the second comma in line 2 would read "or combination tractor and semi-trailer."

A. T. A. objects to the definition of "Own" in proposed rule I (f) as being unduly restrictive. It points out that it is just as logical for the definition to embrace equipment registered in the name of the parent or affiliated corporation as in the name of a wholly owned subsidiary. It stresses its proposed rule 2 d covering permanent identification of vehicles under a long-term lease as adequate to denote the carrier responsible. The teamsters union argues that it is unnecessary to attempt a definition of "own," which, in the final analysis, may depend upon statutory requirements of the several States. It points out the possibility that equipment might be licensed and registered in the name of a carrier or its subsidiary without being actually owned, thereby becoming exempt from any rules prescribed. As previously noted, it seems to be a quite prevalent practice of many users of owner-

operator equipment to have the owners assign the title to the lessees, which presumably enables the latter to register and license the equipment, although not actually owning it.

We see no necessity, at this time, of attempting to prescribe any definition of "own" which would be sufficiently comprehensive, without at the same time, being susceptible to various interpretations, leading to confusion and adding nothing to the regulations.

Proposed rule II—Augmenting equipment.—There appears to be no objection to the requirements that a lease should be in writing, and that the lessee must assume full legal responsibility for the operation of the equipment. There are, however, numerous objections raised to other requirements of the rule. Respecting subparagraph a (1) thereof, it is pointed out that many small carriers might not have supervisory employees available at all points where leases are entered into. Some of the parties stress the fact that the only important point of the rule is that the persons executing the lease or other agreement shall be duly authorized to represent their principals. We agree with this thought and with the suggestion that the instrument should be signed by both parties and not by the "maker" only.

The minimum lease period of 30 days in proposed rule II a (3) has raised a controversy second only to that caused by the suggested requirement that leased equipment be operated by employees of the lessees. The examiner grounded the 30-day proposal on evidence tending to indicate a laxity on the part of prospective lessees in inspecting equipment leased for a single trip, particularly in cases where the lessee may have no further contact for a long period with the vehicle or its owner. This requirement, together with proposed rule II a (4) (vesting exclusive possession in the lessee for the period of the lease) also would interfere with continuing arrangements between the Nation-wide household-goods carriers and their agents, whereby equipment of the latter is called in use from time to time by the national carriers, and at other times is used in the agent's service. Also, as the proposed 30-day rule stands, it might preclude carriers from leasing equipment without drivers from equipment-leasing companies for shorter periods in order to meet occasional extraordinary demands.

The parties who contend that trip leasing is essential to a flexible motor transportation industry, for example, the Florida commission and supporting interests, the Department of Agriculture, National Fisheries Institute, and others, challenge the proposed 30-day requirement as being an illegal invasion of contractual privileges.

The Express Agency, in excepting to the 30-day minimum period and other requirements in proposed rule 2, stresses the exemption

proposed by the examiner for equipment operated in the transportation of railway express and substituted motor for rail service from the employee requirement, and the apparent intent to exempt fully these operations. The exceptions of this respondent are largely on the ground that the proposed requirements would be burdensome.

The evidence as to laxity in inspection of equipment and checking by lessees of drivers' qualifications relates largely to equipment leased for a single trip from owner-operators, particularly the itinerant owner-operators. These individuals, as stated, when transporting commodities generally, frequently fail to comply with our regulations under section 204 pertaining to qualifications and maximum hours of service of employees and safety of operation and standards of equipment.

Those who challenge our authority to adopt regulations tending to restrict the right of the owner-operator to function as an independent contractor for authorized carriers place great stress upon the recognition accorded the status, although not always specifically so described, in the numerous proceedings under the "grandfather" clauses of the act and by the courts, in *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, *supra*, and *United States* v. *Silk*, 331 U. S. 704. In the proceedings under the "grandfather" clauses, the owner-operators functioned under continuing relations to a particular carrier seeking authority as an integral part of the carrier's service to the public. So long as that situation prevailed it was clear that, at least for the purpose of determining rights to certificates and permits, based on "grandfather" operations, the tests laid down in the *Dixie Ohio* case, *supra*, of exclusive use, direction, and control of leased equipment and responsibility to the public, the shippers, and this Commission, were met. We are aware of no proceeding in which operating rights were grounded upon the services of itinerant owner-operators serving one carrier one day and another carrier later.

We are convinced that the trip leasing of the itinerant owner-operator, as disclosed herein, is inimical to sound regulation and proper administration of the safety regulations. We are not satisfied that a rule prohibiting such trip leasing should be prescribed at this time. We believe that correction of this situation should first be left to authorized carriers which engage in such trip leasing. We shall require that all equipment utilized under trip leases be inspected and that such authorized carriers insure that the drivers thereof comply with our safety regulations.

The prohibitions in proposed rule 2 against subleasing of leased equipment, and prohibiting the use of equipment for transporting

property of the owner of the equipment, have drawn objections from many sources. There is little consideration given to subleasing in the record. No adequate justification for it was given. The reason assigned for its prohibition by the examiner was that to permit subleasing would create questions of control and responsibility which the proposed rules were intended to obviate. Our prescribed rule 2, respecting augmenting of equipment, which will require leases to be made direct between the owner thereof and the lessee-carrier, does not provide for subleasing.

The prohibition against using leased equipment for transporting property of the lawful owner, or property in the custody and control of the owner as an agent of the shipper, was in the tentative rules attached to the order of investigation, but no reason appears of record for its inclusion in any rules that may be prescribed herein. Many shippers own special equipment which is leased to carriers who perform transportation for the shippers in such equipment, at tariff rates, or at minimum rates contained in contract-carrier schedules. The practice seemingly is sanctioned, and safeguards provided therefor by section 225 of the act. The prohibition would be unreasonable, and we see no reason for promulgation of any special rule governing the practice, as advocated by the Manufacturing Chemists Association.

The Bureau objects to proposed rule II a (6) to the extent this requires the filing of a copy of any equipment lease with the Bureau, on the ground that with its limited staff it would be unable to examine all copies, and that in the event of complaint it is sufficient to have the lease available at a carrier's terminal. A. T. A. objects to the proposed requirement that a copy of the lease be carried on the leased equipment, on the grounds that some leases might be unduly bulky and that there is no necessity for such requirement if the equipment carries a certification on the part of the lessee that the equipment is operated under lease.

These were intended as policing rules. We do not believe the requirement of filing a copy of a lease with the Bureau is necessary at this time. If equipment that is operated under lease carries a proper certification to that effect, there appears to be no reason why this should not be permitted, as an alternative to the requirement that a copy of the lease be carried with the leased equipment.

The parties which support the rules proposed by A. T. A. oppose the prohibition of compensation for the use of leased equipment based on a percentage of the revenue, on the ground that this is a matter of private contract between the parties. The reasons assigned for the prohibition by the Bureau are that carrier operating statistics

are distorted when a major portion of a carrier's equipment is leased on that basis, and that opportunity is thereby afforded carriers having operating rights, who are unable or unwilling to provide service thereunder, to lease such rights to others under the guise of equipment leases. The examiner indicated that this method of compensation might provide an incentive to violate the hours of service or the State laws respecting loading. We observe that most violations of these types have occurred where the owner-operator received compensation on a tonnage basis. It is pointed out that compensation equivalent to that obtained from a percentage of the revenue earned by the equipment could be arrived at under most any basis, and that compensation based on tonnage makes light-loading traffic unattractive to truck owners. Apparently a majority of the carriers employing owner-operators prefer that compensation for the use of the equipment be based on a percentage of the revenue, and the method has been in use for a long period. We are not convinced that we should specify any basis for the compensation for the use of leased equipment.

Many parties question the logic of the requirement in proposed rule II d that leased equipment be inspected by supervisory employees, who, in many instances, might not be capable of properly inspecting equipment, and it is argued that small carriers might not have such employees available at all points where equipment is leased. So long as the inspection is by a competent person and the fact duly noted on the lease or contract, or on any certificate carried with the equipment, the objective of the rule would be met.

Proposed rule II e would impose identification requirements different from and more stringent than those at present in force prescribed by an order of June 11, 1947, in Ex Parte No. MC–41. The present requirements respecting identification will be embraced in our prescribed rules.

The requirement in proposed rule II f respecting the preparation of and the retention of load manifests for 1 year, although similar to one included in the tentative rules served on the parties, is also objected to by the Bureau on the ground that the present general rules governing preservation of carrier records is adequate. Other parties object to the requirement as being unduly burdensome and wholly unnecessary. A. T. A.'s proposed rule 2 f, which requires that all bills of lading, waybills, freight bills, or other papers identifying the lading be carried with leased equipment, is urged as sufficient. The Express Agency contends that the proposed requirement is impracticable, if not impossible of application, because of the transportation

in its leased equipment of a great number of small and diversified packages in less-than-carload or express service. The reason originally advanced for the requirement by the Bureau was that the manifests might be needed for policing purposes, although the data thereon could be obtained in some other fashion.

Undoubtedly the detail called for by the proposed requirement would impose a burden on the carriers, particularly where less-than-truckload shipments are transported. A requirement that copies of shipping documents be carried with leased equipment, and be preserved by the lessee, should be sufficient for policing purposes. However, we believe that a record of the use of leased equipment is important, and our rules will contain a reasonable requirement to that effect.

The respondents which favor the rules proposed by A. T. A. strenuously object to proposed rule II g that, except where equipment is leased from another authorized carrier and operated in territory common to lessor and lessee, or is transporting railway freight or railway express traffic, the driver must be an employee of the lessee. Those who are opposed to trip leasing support the proposal, claiming that the employer-employee relation is essential to enforcement of proper responsibility, direction, and control of the leased equipment.

The tentative rules served with the order of investigation provided for a check of the driver's qualifications, and the furnishing of a certificate of physical examination by the driver, prior to the operation of leased equipment by any one other than a regularly employed driver. We believe that these requirements, as modified in the rule herein prescribed, should be prescribed at this time.

As hereinbefore stated, our present requirements respecting the preservation of carrier records are sufficient and there is no necessity for proposed rule II h.

Proposed rule III—Emergencies.—Most of the parties who support the proposed rules in general, with a few suggested modifications, object to proposed rule III permitting a waiver of the rules in the case of a defined emergency. Other parties contend that this emergency rule should be expanded to include situations other than those where a shipper's property is in danger of immediate loss or destruction. The Bureau and the teamsters union argue that any regulation of this character, wherein wide latitude is allowed the carriers for interpretation and application, would be difficult to administer. They are of the opinion that if an actual emergency arises, where property is in danger of being destroyed unless promptly moved, the carriers have an implied duty to take appropriate action, and that in such event

no successful prosecution for unlawful operation would or could be made. We agree with this view.

Proposed rule IV—Interchange.—The record contains little evidence respecting violations of the act or of our regulations attributable to the carriers' practices in interchanging equipment. The tentative rules were restricted to the interchange of trailers and semitrailers in through movements. This was modified in proposed rule IV, because of evidence regarding the use of straight trucks in some parts of the country, and the fact certain power units cannot readily be coupled to all makes of trailers in operation, because of differences in brake and light connections. On exceptions, the Bureau indicates that it now believes no restriction should be imposed respecting the type of equipment to be interchanged. We are in accord with this position, in the belief that interchange between common carriers, in order to promote through movement of traffic without unloading, where feasible, should be encouraged. Interchange, of course, should not be used as a screen for unlawful extensions of operating authority, or other violations of law, or our regulations, and our prescribed rule 3 is framed accordingly.

The use to be made of equipment while it is being returned to the interchange point is a proper subject of agreement between carriers. Apparently no thought was given to this point in proposed rule IV. Prescribed rule 3 meets the criticism of the St. Louis carriers with respect to the omission.

The only objection to the requirement in proposed rule IV that interchange equipment be operated by an employee of the authorized carrier to and from the interchange point is raised by the Heavy Haulers. Their point apparently is that the special equipment used in their service must be operated by specially trained drivers through from origin to destination, and they seek special consideration to permit this, where agreements to that effect are made by the carriers through whose territories the equipment would be operated.

It is apparent that these parties have misconceived the application of proposed rule IV, which was not intended to require unloading and transfer at an interchange point of the heavy and cumbersome materials they transport. On exceptions they say:

> Furthermore, because of the nature of the commodities requiring the use of these special low-bed or drop-frame semitrailers, sometimes referred to as "carry-alls," most loads cannot be transferred directly from one semitrailer to another.

The proposed rule contemplated that when one heavy hauler originated a movement destined to a point in the territory of another such carrier, the driver employed by the latter should take over operation

of the equipment at the point of interchange. Presumably all such carriers have drivers equally skilled in the operation of such equipment. The exceptions of this group do not indicate that they would be unable to transport through movements, as they seek to do, by interchange under proposed rule IV, as modified in rule 3 which we shall prescribe. In any event, the provision which we shall make in prescribed rule 5 for entertaining petitions for relief from the rules, will be available to these respondents if they are unable to provide the through service contemplated under the interchange rule prescribed herein.

Rental of equipment to noncarriers.—The Department of Agriculture excepts to proposed rule V a, prohibiting authorized carriers from renting equipment with drivers to noncarriers, or assisting the latter to obtain drivers, unless the service is specified in their certificates or permits. It contends that full compliance with such rule will "unnecessarily increase transportation costs, decrease labor efficiency, and require shippers and Commission-authorized carriers alike to maintain reserve drivers."

Most of the parties, including A. T. A., have contended that inclusion of the prohibition referred to was unnecessary, as merely a restatement of existing law, since the decision in *Motor Haulage Co., Inc.*, v. *United States*, 70 Fed. Supp. 17, affirmed *per curiam*, 331 U. S. 784. Nevertheless, the inclusion of the prohibition appears necessary in view of the apparent ignorance of the parties respecting the law on the subject. We also note that the record herein indicates that shippers in many instances are using the services of owner-operators and their equipment under arrangements which appear to constitute furnishing of transportation for hire by the latter.

Our prescribed rule 4 is designed to burden the shippers as little as may be necessary in order to assist us in policing the leasing practices of carriers subject to our authority.

FINDINGS

We find, upon consideration of all the evidence of record, that evasions and violations of the provisions of part II of the act, and of the regulations prescribed thereunder, occur in the present practices of motor common and contract carriers of property subject to such provisions, in augmenting their equipment otherwise than by purchase, and in interchanging equipment; that it is necessary in order properly to administer, execute, and enforce such provisions and the regulations thereunder, that reasonable rules and regulations be prescribed governing the lease and interchange of motor-vehicle equip-

ment by such carriers; and that the rules and regulations set forth in appendix H hereto are and for the future will be reasonable and should be prescribed for observance by such carriers.

An order prescribing for the future the reasonable rules and regulations set forth in appendix H to the report will be entered.

ROGERS, *Commissioner*, concurring:

I agree with the rules approved by the majority but am of the view that authorized motor carriers should not be permitted to lease their vehicles without drivers to shippers.

APPENDIX A

Rules proposed by the examiner governing agreements, contracts, or leases entered into by authorized carriers of property for the purpose of (1) augmenting equipment, (2) interchanging of equipment, and (3) renting vehicles or equipment to private carriers or shippers

Rule I—*Definitions.*

a. *Authorized carrier.*—A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of sections 206, 207, 208, or 209 of part II of the Interstate Commerce Act.

b. *Equipment.*—A motor vehicle, straight truck, tractor, semitrailer, full trailer, or combination tractor or semitrailer and combination straight truck and full trailer.

c. *Interchange of equipment.*—The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. *Regular employee.*—A person not an agent but regularly and in exclusive full-time employment.

e. *Noncarrier.*—A person other than an authorized carrier.

f. *Own.*—A carrier will be considered to own equipment only if the equipment is licensed and registered under State laws in the name of the carrier or of a wholly owned subsidiary of the carrier.

Rule II—*Augmenting equipment.*—Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that vehicles and equipment rented or leased from another authorized carrier may be utilized in interchange service only as provided in rule IV of these regulations.

a. The contract, lease, or other arrangement for the use of equipment under this rule—

(1) Shall be made direct between the owner of the equipment or some person in his regular employ in a supervisory capacity, on the one hand, and the authorized carrier, one of its executives, or a regularly employed supervisor employee of such authorized carrier, on the other hand;

(2) Shall be in writing and signed by the maker, except in an emergency, as defined in rule III;

(3) Shall apply for a period of not less than 30 days, unless entered into between authorized carriers, or in an emergency, as defined in rule III hereof;

(4) Shall provide for the exclusive possession, control, and use of the equipment during the full period of the lease, and for the complete assumption on the part of the lessee of full responsibility in respect of said equipment during the period of the lease to the public, the shipper, and the Interstate Commerce Commission, and shall not permit the subletting or subleasing of the equipment in whole or in part, or permit the use of the equipment for the transportation of property of the lawful owner thereof, or property which is in the custody or control of the lawful owner of the equipment as the agent of shippers; and

(5) Shall specify the time and date the agreement, contract, or lease begins and the time or the circumstance on which it ends, together with a written endorsement of each party to such agreement, contract, or lease (which shall be the time for the giving of receipts for the equipment as required by the rule II b);

(6) Shall be executed in quadruplicate; the original shall be retained by the lessee, one copy shall be retained by the lessor, one copy shall be filed with the Bureau of Motor Carriers of the Interstate Commerce Commission, and one copy shall be carried on the equipment specified therein, during the entire period of the contract, lease, or other arrangement.

b. The authorized carrier or its regularly employed supervisory employee shall, at the time it takes possession, give to the owner or its agent, a receipt specifically identifying the equipment; and, at the time its possession ends, shall obtain from the owner or its agent, a receipt delivered to the authorized carrier or its regularly employed supervisory employee.

c. Compensation for the use of the equipment shall not be computed on the basis of any division or percentage of any applicable rate or rates on any commodity or commodities transported in said vehicle during the period of the lease.

d. It shall be the duty of the authorized carrier, before taking possession of leased equipment in accordance with rule II b, to have the same inspected by one of its responsible and competent supervisory employees, in order to insure that said equipment complies with parts III and VI of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and accessories necessary for safe operation" and "Inspection and maintenance," and if explosives or other dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure that it complies with part VII of the safety regulations pertaining to "Safe transportation of explosives." The employee making said inspection shall certify the results thereof on the lease or contract providing for the use of the equipment, and if his inspection discloses that the equipment proposed to be rented or leased does not comply with the safety regulation requirement, possession thereof shall not be taken.

e. The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement, in accordance with the Commission's requirements and in the following manner:

(1) There shall be displayed on the sides thereof the following legend: "Operated Under Lease By ----------," followed by the name of the operating carrier; and if a removable device is used to display this legend and to identify the lessee carrier as the operating carrier, such device shall be on durable material, such as wood, plastic, or steel, and bear a serial number in the lessee carrier's own series so as to keep proper record of each of the identification devices in use on the rented equipment.

(2) A record of the affixing of the legend referred to in rule II e (1), or the attaching of the removable device shall be maintained at the lessee carrier's terminal, which shall include the serial number of the device affixed or attached to the rented equipment, the date placed thereon, the name and address of the lawful owner of the equipment, the State registration number of the equipment on which the legend is displayed, or the removable device atteached, and the date the same was removed by the lessee carrier.

(3) The authorized carrier operating leased or rented equipment under these rules shall obliterate any legend showing it as the operating carrier displayed on such equipment, and shall remove any removable device showing it as the operating carrier, upon relinquishing possession of the equipment in accordance with rule II b, and before final settlement for the rental charges is made.

f. The authorized carrier utilizing equipment leased or rented under these rules shall prepare and preserve for 1 year a truck or load manifest covering each load or trip for which the equipment is used in its service containing the name and address of the lawful operator of the equipment; the State registration number of the equipment; the name and address of the driver operating the equipment; the description and weight of the commodities transported therein; the point or place of origin and time and date of departure; the point and place of final destination and the time and date of arrival; and the carrier's serial number of the identification device affixed to the equipment.

g. Except where equipment operated under this rule is (1) leased or rented from another authorized carrier and operated between points over the route or routes, or within the territory such other authorized carrier is authorized to serve, or (2) is utilized in the transportation of railway express traffic, or in substituted motor for rail transportation of railroad freight moving between railroad stations on railroad billing; the person assigned to drive such equipment shall be an employee of the lessee-carrier, and his wages shall be kept separate and distinct from any charges made for the use of the equipment and shall not be made part of the terms or conditions of the contract, lease, or other arangement covering the use of the equipment.

h. The authorized carrier acquiring use of equipment under this rule shall retain in its files for not less than 2 years after the termination of the arrangement for the use of the equipment the original copy of the written agreement, contract, or lease.

Rule III—*Emergency.*—An authorized carrier may, in an emergency, as defined herein, and over routes, within territory, and in respect of commodities specified in its certificate or permit, utilize equipment it does not own, with or without drivers, only for the period of the emergency, without compliance with the provisions of rule II of these rules, provided:

a. Such authorized carrier, immediately upon termination of the emergency, shall relinquish the equipment so utilized, and write to the Bureau of Motor Carriers, Interstate Commerce Commission, a full description of the circumstances considered as meeting the definition of an emergency as defined herein, the reason why equipment could not be rented or leased in conformity with rule II, the name or names of the owner or owners of such equipment, a complete description thereof, including serial numbers and State license numbers, and the name or names of the driver or drivers of equipment so utilized; and

b. An emergency exists, which, as used herein, means: Any situation in which the property of a shipper or shippers is in imminent danger of immediate loss or destruction by any means not within the control of the shipper or shippers, and

other adequate transportation than that of the authorized carrier which augments its equipment under this rule, is not immediately available.

Rule IV—*Interchange of equipment.*—Common carriers of property may by agreement, contract, or lease interchange any equipment defined in rule I–b hereof, except tractors, unless the tractors are used in combination with other equipmnt described in said rule, with other authorized common carriers of property, for the purpose of facilitating the movement of through traffic, under the following conditions:

a. The contract, lease, or other arrangement for the use of the equipment must be made direct by the carrier which owns the equipment and another carrier proposing to acquire the use thereof, or by executives of such carriers, or persons in their regular employ in supervisory capacities, provided that the arrangement shall not permit the subletting or subleasing of the equipment in whole or in part.

b. The certificates held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

c. Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and to the point of interchange and over the route or routes authorized in the participating carriers' respective certificates.

d. The traffic transported by each of said carriers must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment and in the manner prescribed by the Commission. Rental charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions accruing to the carriers by the application of local or proportional rates.

e. It shall be the duty of the carrier acquiring the use of equipment in interchange to have the same inspected in the manner provided in rule II–d of these rules by a responsible supervisory employee, and equipment which does not meet the safety regulation requirements shall not be operated in the respective services of the interchanged carriers until the defects have been corrected.

f. Any agreement, contract, or lease covering interchanged equipment shall be in writing; shall describe the service to be performed by the parties thereto, and the equipment and specific points of interchange; shall meet the essentials of a valid bilateral contract between the parties, and a copy thereof shall be filed with the Bureau of Motor Carriers, Interstate Commerce Commission.

Rule V—*Rental of motor vehicles and equipment to private carriers and shippers.*—

a. Unless such service is specified in their operating authorities, authorized carriers are prohibited from renting equipment to noncarriers with drivers, and shall not directly or indirectly assist such noncarriers to select or obtain drivers for equipment rented to them.

b. A copy of any lease, contract or agreement between any authorized carrier and noncarrier, providing for rental of equipment of the former without drivers to the latter shall be transmitted to the Bureau of Motor Carriers, Interstate Commerce Commission, and a copy carried with the rented equipment during the period of the lease, contract or agreement.

c. Before the effective date of the lease, contract or agreement for rental of equipment to noncarriers without drivers, becomes effective, the authorized carrier shall cause to be removed from the equipment all marks of identification

that indicate that such equipment is utilized in its operation, which marks shall not be restored until the termination of the agreement.

d. Any noncarrier taking possession of equipment without drivers from an authorized carrier under this rule shall have the same inspected in the same manner as required of authorized carriers taking possession of leased equipment under rule II–d of these rules.

APPENDIX B

Rules governing leasing and interchange of motor-vehicle equipment by motor common and contract carriers subject to the Interstate Commerce Act, suggested by American Trucking Associations, Inc.

RULE 1

DEFINITIONS

a. AUTHORIZED CARRIER. A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of sections 206, 207, 208, or 209 of part II of the Interstate Commerce Act.

b. EQUIPMENT. A motor vehicle, straight truck, tractor, semitrailer, full trailer, or a combination tractor and semitrailer and combination straight truck and full trailer.

c. INTERCHANGE OF EQUIPMENT. The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. NONCARRIER. A person other than an authorized carrier.

e. HAULING AGREEMENT. A contract under which an owner-operator or an owner-driver furnishes equipment and driver to an authorized carrier.

RULE 2

AUGMENTING EQUIPMENT

Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that equipment of another authorized carrier may be utilized in interchange service as provided in rule 3 of these regulations.

a. Contract, lease, or hauling agreement for the use of equipment under this rule—

(1) Shall be in writing and signed by competent, authorized employees or agents of both parties or the principals themselves.

(2) Shall specify the date and place of execution; the identity of the parties, including their status under the Commission, if any; addresses of both parties; description of the vehicle or vehicles, including make, model, serial number, engine number (if any), and State registration; effective date, and provision for termination.

(3) Shall contain a compensation clause.

(4) Shall provide for acceptance by the lessee of all legal responsibility to the Commission and to the public.

(5) Shall contain a statement to the effect that no other agreement between the parties shall have the effect of nullifying its provisions in whole or in part.

(6) Shall be retained in the authorized carrier's files for not less than 1 year after termination.

b. Vehicles acquired by a lease or hauling agreement shall not be used in the service of more than one lessee at any one time, but may be leased to more than one carrier as long as no more than one carrier is entitled to possession and use thereof at the same time.

c. It shall be the duty of the authorized carrier, before taking possession of equipment in accordance with rule 2b, to require a responsible and competent regular employee to inspect the equipment proposed to be used under this rule to insure that it complies with parts 3 and 6 of the Motor Carrier Safety Regulations (Revised) pertaining to "Parts and accessories necessary for safe operations" and "Inspection and Maintenance" and if it is proposed to transport explosives or other dangerous articles, further to inspect and check such vehicles or equipment to insure that it complies with part 7 of the Safety Regulations pertaining to "Safe Transportation of Explosives." If it is found that the equipment proposed to be rented does not comply with the safety regulation requirements, possession shall not be taken.

d. A leased vehicle may be permanently identified by painting thereon the name, ICC number and an accounting number of the lessee carrier; when so identified, and provided no inconsistent identification shall appear on the vehicle, the provisions of paragraphs e, f, and g shall not apply.

e. The authorized carrier acquiring the use of equipment not identified in accordance with paragraph d shall properly and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement in accordance with the Commission's requirements and in the following manner:

(1) There shall be fixed thereon a removable device properly identifying the authorized carrier as the operating carrier; such device shall be on durable material, such as wood, plastic, or steel, and bear a serial number so as to keep proper record of each of the identification devices in use on rented equipment.

(2) Proper record of the affixing of the removable device shall be maintained at the authorized carrier's terminal and shall show the serial number of the device that is affixed to the rented equipment, the date affixed, the name and address of the lawful owner of the equipment, the State registration number of the equipment to which device is affixed, and the date the device was removed by the authorized carrier.

(3) The authorized carrier shall remove the device upon relinquishing possession in accordance with rule 2b, and before final settlement for the rental charges is made.

(4) When leased vehicles are coupled together in combination such as tractor and semitrailer or truck and trailer, only the power unit need be placarded in accordance with paragraph e.

f. Whenever equipment is operated under rule 2.e there shall be carried on the vehicle during the entire term of the lease bills of lading, way bills, freight bills, manifests, or other papers identifying the lading in the vehicle which shall clearly indicate that the transportation of the property is taking place under the responsibility of the carrier whose identifying device is attached to the vehicle.

g. Whenever a leased vehicle is being operated under rule 2 e there shall be carried on the vehicle during the entire term of the lease, either a copy of the lease or in lieu thereof a certificate signed by a responsible, competent supervisory employe of the lessee-carrier, showing that the vehicle was inspected before any service was performed under the agreement and was found to be in compliance with the safety requirements of the Commission; and that the files of the carrier contain proper evidence as to compliance with the safety rules and regu-

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lations of the Commission with regard to hours of service and physical examination of the driver of the vehicle.

RULE 8

INTERCHANGE OF EQUIPMENT

Two or more carriers may interchange equipment to accomplish the through movement of the lading and the return of the vehicle to the originating carrier in accordance with a plan which the parties have reduced to writing and filed with the Commission. This plan shall be consistent with authority granted by the Commission or pursuant to the permission granted to common carriers in section 216 (c) of the act.

When such a plan is in existence and on file with the Commission, any carrier, lawfully a party to such plan, shall observe the following rules and conditions when operating the equipment of another carrier, lawfully a party to the plan, over its routes:

a. Where power units are interchanged there shall be affixed to the vehicle a removable device made of durable material, such as wood, plastic, or metal, properly identifying the carrier over whose routes and in whose service the vehicle is being operated after the interchange. These devices shall be serially numbered and a record kept in the office of the carrier as to the usage of each such device. The device must be removed by the carrier before the vehicle is interchanged with another carrier party to the plan.

b. There shall not be on the power unit the identifying device of more than one carrier at any one time.

c. When proper identifying information is on the power unit, a trailer or semitrailer coupled in combinations with the power unit shall not be required to carry any such identifying device.

d. There shall be carried on the vehicle or combination of vehicles a certificate, signed by the carrier in whose service and over whose routes the vehicle is being operated, stating that the operation is taking place in accordance with a plan which has been filed with the Commission.

e. The billing shall be carried on the vehicle and shall be in consonance with the carrier over whose routes and in whose service the vehicle is being operated.

f. Interchange plans shall include:

(1) Date and place of execution.

(2) Identity of the parties including their status with the Commission.

(3) Addresses of the parties.

(4) Description of general operation of the plan.

(5) Place or places at which interchange will take place.

(6) Compensation clause, which shall provide that any rental charge for equipment shall be separate and distinct from the divisions of rates and charges.

(7) Effective date.

(8) Acceptance of responsibility to the Commission and to the general public by the parties to the plan for the operation of vehicles under the plan while on their routes or in their service.

(9) Signatures by competent authorized representatives of the carrier parties to the plan.

(10) The method of billing to be used so that the billing will be in consonance with the carrier over whose routes and in whose service the vehicle is being operated.

(11) The method and procedure which the carrier parties will use under the plan in the matter of equipment inspections to insure compliance with the safety rules of the Commission.

RULE 4

RENTAL OF MOTOR VEHICLES AND EQUIPMENT TO OR FROM SHIPPERS

If an authorized carrier at any time hauls property, or performs services for a shipper to whom or from whom the authorized carrier leases one or more vehicles, a letter shall be sent to the Commission describing the circumstances, conditions, and compensation surrounding the transaction, unless the tariffs or the schedules of the carrier provide a specific rate for this type of service.

EXEMPTIONS

RULE 5

The provisions of these regulations shall not apply to operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission.

RULE 6

The provisions of these regulations shall not apply to the operation of equipment wholly within a commercial zone by any carrier.

RULE 7

Application may be made by any carrier or group of carriers to the Director of the district in which operations involved will be conducted, or to the Director of the Bureau of Motor Carriers, Interstate Commerce Commission, for authority to depart from these regulations in whole or in part.

The officers designated are hereby authorized to grant special permission for departure from these regulations to the extent that they may determine such departure is justified by the facts and circumstances presented in support of the application, subject to the following:

a. In emergencies, relief may be granted for a period of not more than 30 days on application made orally in person or by telephone, or in writing, subject only to the proviso that applicant shall notify known competitors of grounds for the application and the action taken within 10 days after permission for departure is authorized.

b. Permanent relief may be granted on written application, subject to review by the Commission, provided applicant shall (1) notify known competitors by serving on them notice of the application; and

(2) make adequate provision for protection against abuse of the permission granted.

c. In the case of applications for permanent relief, either an applicant or a protestant may appeal the decision of the officer acting on the matter by a formal petition to the Commission for review.

d. Decisions rendered by officers on applications for permanent relief shall be in writing, and shall contain a full statement of the grounds upon which the decision is based.

APPENDIX C

Summary of conditions reported by field staff of the Bureau of Motor Carriers, based on an informal investigation early in 1948

General.—The practice of hiring motor vehicles of others seems to be generally engaged in by all types of carriers. The sources from which vehicles are hired are other for-hire carriers, exempt carriers, intrastate carriers, private carriers, and noncarriers, including owner-operators and truck rental companies.

Some carriers own no equipment and depend entirely upon other persons to supply the vehicles for the transportation which they are authorized to perform. Other motor carriers utilize equipment which they do not own in parts of their operations, over certain routes, during certain periods, or for the transportation of certain commodities.

In the operations of many carriers, there are periods when an abnormal amount of equipment is required to meet the demand for service. If these carriers do not own equipment adequate to meet the peak demand, they use leased equipment; and if they do own sufficient equipment, they then become lessors of excess equipment during off-peak periods. Examples of these are carriers which serve resort areas, seasonal industries, and certain agricultural communities.

In certain sections of the country the movement of tonnage by authorized carriers into the area is much greater than that which flows out. For instance, regular-route carriers of general freight domiciled in Florida have unbalanced operations. That is, south-bound tonnage is much greater than north-bound tonnage. On the other hand, fruit and vegetable trucks move from Florida to northern and eastern cities and cannot afford to return to Florida empty. The authorized carriers lease the vehicles of fruit and vegetable haulers on the return movement to Florida.

Control, direction, and domination of transportation service.—The control, direction, and domination which carriers exercise over the performance of transportation service in which hired vehicles are used is generally less than that exercised over company-owned vehicles. This condition is brought about as a result of the informality of the hiring arrangements, insufficiency of control over the operation of the vehicles and of the operators, the loss of contacts with shippers, and the attempts of authorized carriers to avoid or shift their responsibilities to others.

Informality of arrangements.—Arrangements for the use of equipment are frequently made over the telephone, without any inspection of the vehicle by the lessee to insure compliance with safety regulation requirements or any check as to whether the driver is qualified to operate the vehicle.

Lease arrangements are not always concluded before the transportation takes place. Sometimes owner-operators pick up loads first and then shop around for a carrier which will issue billing under the most desirable arrangement. These operators frequently haul on a carrier's billing without its knowledge and keep all of the revenue.

Some carriers make a regular practice of supplying other carriers and operators of equipment with lease forms signed in blank, pads of bills of lading, freight bills, and placards, to be used in transporting property for their account with the result that frequently other shipments are solicited, transported, and collected for in their name and without their knowledge or specific authorization. Sometimes no arrangements are made for the removal of the placards

upon termination of the lease and lessors use them to get loads without the knowledge of the carriers, and without notifying them keep the entire revenue.

Because of the informality of the arrangements for the use of equipment, questions arise as to liability for accidents resulting in injuries to the public and as to which insurer is liable at a particular time, the insurer of the authorized carrier or the insurer of the owner, and when the liability of one ends and that of the other begins.

The fact that leases are frequently not in writing is an obstacle to enforcement of the provisions of the act. Proof of unauthorized operations is hampered when, upon investigation, the parties say an oral lease was in existence. Gypsy operators realize that almost anything can be done under a so-called oral lease and, if they know the name of a carrier having rights, may carry a shipment in its name and, if caught in a road check, state that they are under lease to that carrier. Even if this statement is not believed by the Bureau's representative and a check is made and it is determined that the shipment is being transported without authority, all that has been obtained is evidence of one unauthorized shipment.

Sometimes the informality of the arrangement for the use of his vehicle operates to the detriment of the owner-operator. He may be required to wait an unreasonable time for his money, or be unable to get the carrier to unload the vehicle promptly, and receive no payment from lessee for the use of the vehicle as a temporary warehouse.

Insufficiency of control over operation of vehicles.—It is a frequent practice among some carriers to lease only part of the carrying capacity of a vehicle, and among some owners to lease the same vehicle to several carriers for use at the same time. In the latter instance, formal leases may even be executed which provide that each lessee shall have full dominion and control over the vehicle and that the driver shall be the employee of each lessee. In practice, however, it is usually the lessor which retains the control. Sometimes vehicles are leased to carriers which are under lease to private carriers at the same time. Intrastate carriers transport shipments on their own authority and interstate shipments allegedly under a lease of their vehicle to an authorized carrier at the same time. In case of accident, it is difficult to determine which carrier is liable.

In trip leasing, difficulties arise in establishing responsibility for accidents which occur after the owner-driver has completed delivery. The carrier may deny liability and the owner may lack insurance after the leased vehicle has delivered the shipment.

Some of the same difficulties arise when vehicles are leased consecutively to different carriers, subleased, or used only occasionally under long-term leases.

Insufficiency of control over drivers.—Carriers do not have sufficient control over some operators of leased vehicles to make them take 8-hour rests after operating 10 hours. Gypsies will roam over a wide territory, hauling for carrier after carrier, no one of which has control over or knowledge of the time element affecting compliance with the hours-of-service requirements. Specifically, examples can be drawn of service for four separate carriers during an 8- or 10-day period with 24 to 30 hours on-duty time for each carrier, with the owner-operator ostensibly under the requirements as to each individual carrier. It would be an extremely laborious if not impossible task for the Bureau's representatives to follow these gypsies in the records of carrier after carrier, particularly when they work for carriers located in several districts in a given period of time.

Lack of control over the operators of leased vehicles presents other problems. Complaints most frequently made against owner-operators are that they take the most direct route to destination, regardless of the carrier's operating authority, drive while drunk, carry liquor in the cab, transport unauthorized persons, particularly women, operate unsafe equipment, and charge gasoline and tires to the carriers without their authorization.

Loss of contacts with shippers.—The arrangements which carriers make with vehicle owners sometimes result in the latter obtaining control of the traffic through contacts which they establish with shippers. After the vehicle owners become acquainted with shippers through hauling under lease to a carrier, they haul for the shipper under lease, without reporting it to the carrier. Owners of a vehicle or of a fleet of vehicles, sometime control certain traffic. There are shipping clerks and traffic officials of large companies who prefer to deal directly with owner-operators instead of with carriers. There are reports of gifts by owner-operators to shipping clerks and traffic officials of large shippers for information respecting the movement of particularly desirable pay loads. There also are reports that traffic managers or other officials of certain large shippers are operators or owners of fleets of trucks which haul property of the shippers under lease to authorized carriers.

Avoidance of carrier responsibilities.—Carriers which depend on leased equipment are handicapped during certain seasons when truck owners can get greater returns from the transportation of exempt commodities. Those which depend on gypsies do not know from day to day what equipment they will have available to transport traffic which is offered. Their ability to move traffic depends upon the number of gypsies which communicate with them for loads on a given day.

Some carriers pay owner-drivers on a percentage basis and deny responsibility for claims, saying each driver is responsible for his individual actions. They have authorized truck owners to solicit business with the understanding that it will be hauled in their trucks under lease to the carrier. They do not pay proper attention to complaints of shippers since they do not solicit the business. Sometimes they refer all calls to the truck owners and have no connection with the operation except to collect a percentage of the revenue.

Shippers of household goods usually expect to have service from the carrier which gives the estimate. When that carrier transports the shipment on another carrier's authority, the shipper may be required to handle claims with a carrier of which it never heard.

In the operation of leased vehicles there is frequent disregard of the regulations governing the identification of vehicles.

In leases between carriers in connection with through routes, the parties frequently bypass a common point in their respective rights. The point of theoretical interchange may be far removed from any terminal of either carrier. Where both carriers have rights over part of the through route, drivers have been checked who were not certain which of the two carriers they represented. Some carriers also do not keep account of the transportation in accordance with the requirements of the Commission.

Accidents occur to leased vehicles as to which no reports are made because the carrier does not know of them or, by the time it learns of them, the owner-drivers involved cannot be located. Where claims are filed after the owner-drivers have disappeared, carriers are unable to ascertain essential facts as to liability.

The reports of carriers which operate leased vehicles do not show a clear picture as to expenses incurred in license fees, gasoline, tires, drivers' wages, re-

pairs, maintenance, and other items which go into reports covering company-owned equipment. The practice of hiring equipment for a percentage of the revenue tends to make operating statistics of motor carriers worthless.

Abuses of leasing and interchanging vehicles.—The practices of leasing and interchanging vehicles are used as devices to circumvent the provisions of the act. Equipment arrangements are often merely subterfuges to enable carriers to engage in transportation without appropriate authority, to extend the scope of their operations unlawfully, or to gain an unfair advantage over competitors.

Under the guise of leases of equipment, carriers which have no facilities with which to operate and which are not willing to render the service, collect a percentage of the revenue for the use of their rights by others who do have the facilities and who are willing to provide the service. These carriers protest applications of others for authority to furnish the service on the ground that they have facilities to furnish the service needed. The facilities to which they refer are those of the ones applying for authority.

Abuses of the practices of leasing and interchanging vehicles result in motor carriers usurping functions of the Commission. The so-called lessee of vehicles is frequently in effect granting operating authority to the lessor and charging a percentage of the revenue involved for the right.

APPENDIX D

Analysis of pertinent portions of replies of 200 owner-operators to questionnaire of United Truck Owners of America, Inc., regarding leasing practices

Domicile of owner-operators.—Those answering the questionnaire were from the following States: Ohio, Indiana, New Jersey, Pennsylvania, Illinois, New York, Georgia, Kentucky, Minnesota, Maryland, Missouri, Oklahoma, Texas, Alabama, Kansas, Florida, North Carolina, Tennessee, Michigan, Virginia, and Connecticut.

Method of compensation.—Of those reporting, 85 percent receive a percentage of revenue and prefer that basis, 9 percent are paid on a tonnage basis and prefer it, 2 percent are compensated on a tonnage basis but prefer the percentage of revenue basis, and 4 percent operate on mileage basis and prefer it. Those paid by a percentage of revenue receive from 50 to 88 percent; the majority receiving about 70 percent.

Loading and unloading expense.—Of those reporting, 90 percent pay loading and unloading charges, 9 percent pay neither, and 1 percent pay under some circumstances.

Claims.—Of those reporting, 70 percent are held responsible for loss and damage claims, 15 percent are not so held, and 15 percent report that sometimes they are held responsible.

Bridge and other tolls.—Of those reporting, 90.5 percent bear the toll charges, 3 percent do not, and 4 percent bear such charges in part. The others report no such charges in their territory.

Safety.—Practically all report that the carriers inspect their vehicles when the lease is signed and that the vehicles are subject to annual State inspection. Flares and all other safety equipment are supplied by the owner-operators.

Fines.—None are reimbursed for fines for traffic violations or overloading.

Insurance.—Practically all report that public liability, property damage, and cargo insurance are carried by the carriers, and that collision, fire, and theft insurance are carried by the truck owners.

Drivers.—About 95 percent drive their own equipment and do not require a helper.

Salaries.—Of those reporting, 39 percent stated that their salary is paid as a separate item; and 61 percent reported that it is not.

Uniform lease.—Practically all of those replying favor a uniform lease on both long- and short-term leases. All except 3 percent advocated adoption of the U. T. O. tentative lease.

Duration of leases.—Practically all leases are cancellable on 15 days' notice or less.

Title of vehicles.—Of those reporting, 56 percent stated that the carriers hold title to the leased equipment, 39 percent answered, "No," to this question and 5 percent of the owner-operators indicated that the carriers hold title to part of their equipment.

Identification of equipment.—Of those reporting, 86 percent stated that their equipment is painted to harmonize with the lessee carrier's fleet, 13 percent answered, "No," to the question and very few indicated that some lettering had been placed on their equipment by the carrier. Painting expenses in practically all instances were borne jointly by the owner and the carrier.

Length of employment.—The reporting owner-operators had been with their companies for periods from 1 to 18 years. The weighted average was over 4.5 years.

Deposits.—Nine of the 25 interstate common carriers involved served by the reporting owner-operators require deposits ranging from $40 to $270 per unit. The cash deposits required are usually in amounts of $100 or more per unit. One company requires $100 bond per unit. Certain of the carriers with many pieces of leased equipment each do not require a deposit from all of their lessors. About 95 percent of the reporting owner-operators have deposits or bonds with carriers.

APPENDIX B

Suggestions of Florida carriers for controlling trip leasing

(1) All trip leases must be in writing, executed in quadruplicate, and entered into only at the point of origin. The original is to be given to the driver of the leased unit, the duplicate forwarded to the accounting department of the carrier's general office, the triplicate to be retained by the origin agent and the remaining copy kept by the lessor as his record.

(2) No trip lease in respect of any vehicle to be entered into until the vehicle has passed rigid inspection, meets all Interstate Commerce Commission requirements and the results of the inspection must be entered on the lease.

(3) No trip lease to be executed unless the route or routes over which the vehicle is to travel are set forth therein.

(4) Every trip lease must apply between terminal points of the lessee-carrier, and no pickups can be performed by the driver of the leased vehicle. Where the driver makes drop-offs at points other than final destination the lease can only be terminated at the point of final drop-off.

(5) The driver of the leased vehicle must be required to obtain 8 hours' rest at a place designated by the lessee-carrier and must be furnished lodgings or paid a lodging allowance on the same basis as the carrier pays its drivers. The lessee-carrier shall stipulate where the driver is to stop en route and the driver must check in and out with the carrier's agent at the point designated.

(6) No trip lease can be executed unless the driver of the leased vehicle furnishes the lessee-carrier with a physical examination report or a certificate thereof.

(7) No trip lease shall be executed unless the lessee-carrier installs on the leased equipment appropriate signs meeting Interstate Commerce Commission requirements.

(8) A trip lease shall not be executed unless settlement can be effected at the carrier's destination terminal; the driver of the leased vehicle must render to the lessee-carrier the original of the lease contract, driver's log, and identification signs, and the driver shall not be paid until these matters are surrendered to the lessee-carrier.

APPENDIX F

Comparison of numbers of vehicles owned and leased, and of other data of four principal household-goods carriers

Carrier	Ownership	Capital investment	Vehicles operated	Vehicles owned	Vehicles leased	Annual gross revenue [1]	Annual revenue earned by owned equipment [1]	Annual revenue earned by leased equipment [1]	Percent of revenue leased equipment
United Van Lines, Inc.	Moving companies: 107.	$499,622	1,938	124	1,814	$3,797,776	$783,384	$3,014,392	79
Aero Mayflower Transit Co.	Stockholders: 25.	--------	1,252	742	510	[2] 9,139,834	[2] 6,377,103	[2] 2,762,731	30
North American Van Lines, Inc.	Stockholders.[3]	385,000	680	98	582	[2] 3,414,567	[3] 566,667	[2] 2,847,900	83
Greyvan Lines, Inc.	Stockholders: Individuals, and The Greyhound Corporation.	[4] 400,000	214	None	[5] 214	3,185,426	None	3,185,426	100

[1] The revenues are for 1948, unless otherwise indicated.
[2] Revenue for 1947; the 1948 figures not being complete at time of hearing.
[3] Of whom 110 are agents of North American.
[4] All of which is invested in terminals and warehouses.
[5] As stated in the discussion, "leased" here covers the hiring of the owner-drivers, and is not apt as applied to the vehicles.

APPENDIX G

Extracts from truckman's agreement between Greyvan Lines Inc. and its independent contractors

1. EQUIPMENT. The truckman will furnish to the Company for its exclusive service, said motor truck or trucks together with all necessary cabs and equipment required in the transportation business. He will, before placing in the service of the Company, paint said motor truck or trucks, at his own expense, in accordance with the standard company colors as designated by the company, and will thereafter permit the company to have said motor truck or trucks varnished or repainted at its expense whenever, in the opinion of the company, there is need therefor; and when said motor truck or trucks are withdrawn from the service of the Company shall immediately, at his own expense, remove all company colors, insignia and advertising therefrom, and eliminate all permit or certificate numbers designating said motor truck or trucks as operating in the service of the company.

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2. HAULING. The Truckman will devote said motor truck or trucks exclusively to the services of the Company in its transportation of goods, wares and merchandise, loading and unloading the same and delivering to destination in accordance with shipping contracts or bills entered into by the Company consignors or consignees; and in connection therewith comply with all the rules and regulations and instructions of the company.

5. DRIVING. The Truckman will personally drive his motor truck or trucks exclusively, unless unforeseen circumstances require his employment of a substitute driver, of which the Company shall be notified and give its approval provided, however, that the Truckman may permit a competent helper to act as relief driver, so long as such Truckman or such substitute driver remains personally on the motor truck or trucks.

8. BONDING. The Truckman agrees to make application through the Company for a fidelity bond covering the truckman and/or his substitute driver, in an amount not to exceed $1,000 in a surety Company approved by the company and agrees further that the cost of any bond which may be issued but may be paid by the company and charged to the account of the truckman.

12. MAINTENANCE. The Truckman will, at his own expense, keep said motor truck or trucks in good mechanical condition at all times, and keep said motor truck and equipment clean, and comply with the safety provisions of each State and of the Interstate Commerce Commission, and immediately make mechanical correction or meet other requirements necessary to the proper operation of said motor truck or trucks.

14. SHIPPING AND SERVICE CONTRACT. All contracts and/or bills of lading for the hauling of goods, wares and merchandise and for other services shall be between the Company and the shipper or consignor. In the event the Truckman has the opportunity to acquire goods, wares and merchandise for carriage, he will in each specific instance notify either the nearest or the general office of the Company and furnish sufficient details to enable the Company to contract for the handling of such shipment in its own name.

15. OTHER HAULING. The hauling of goods, wares and merchandise by the Truckman for any person other than those under contract with the Company to the breach of this agreement and the Company shall have the right to immediately terminate same.

16. LAWS. The Truckman expressly agrees to comply with all Federal and State laws and the ordinance of each and every city, village and municipality into and through which his motor truck or trucks may be operated, and also the rules and regulations of any governmental agency having jurisdiction over the highways of any State or Province for the operation of said motor truck or trucks, including all laws, ordinances, rules and regulations relating to licensing, speed, safety devices and equipment, weight tonnage, width, height, length, etc.

APPENDIX H

Rules prescribed governing the practices of authorized carriers of property in (1) augmenting equipment, (2) interchanging of equipment, and (3) renting vehicles or equipment to private carriers or shippers

Rule 1.—*Definitions.*

(a) *Authorized carrier.*—A person or persons authorized to engage in transportation of property as a common or contract carrier under the provisions of sections 206, 207, or 209 of the Interstate Commerce Act.

(b) *Equipment.*—A motor vehicle, straight truck, tractor, semitrailer, full trailer, combination tractor and semitrailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange of equipment.*—The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

(d) *Regular employee.*—A person not merely an agent but regularly in exclusive full-time employment.

(e) *Agent.*—A person other than a regular employee duly authorized to act for and on behalf of an authorized carrier.

(f) *Noncarrier.*—A person other than an authorized carrier.

Rule 2—*Augmenting equipment.*—Other than equipment utilized in interchange service, as defined in rule 3 of these regulations, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a) The contract, lease, or other arrangement for the use of such equipment—

(1) Shall be made between the authorized carrier and the owner of the equipment;

(2) Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them;

(3) Shall provide for the exclusive possession, control, and use of the equipment by the authorized carrier when operated by or for such carrier and for the complete assumption on the part of such authorized carrier of full responsibility in respect of said equipment during the period the equipment is operated in its service, to the public, the shippers, and the Interstate Commerce Commission;

(4) Shall specify the time and date the contract, lease, or other arrangement begins, and the time or the circumstances on which it ends, and the method of determining the compensation for the use of the equipment. The duration of the contract, lease, or other arrangement shall coincide with the time for the giving and receiving of receipts for the equipment as required by rule 2–b of these rules; and

(5) Shall be executed in triplicate; the original shall be retained by the authorized carrier, one copy shall be retained by the owner of the equipment, and one copy shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in rule 2–d (3), is carried in lieu thereof.

(b) *Receipts.*—When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for its said carrier, employee, or agent shall give to the owner of the equipment or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the authorized carrier ends, it or its employee or agent shall obtain from the owner of the equipment or its regular employee or agent duly authorized to act for it a receipt specifically identifying the equipment, and stating therein the date and the time of day possession thereof is taken.

(c) *Inspection of equipment.*—It shall be the duty of the authorized carrier, before taking possession of equipment to inspect the same or to have the same inspected by one of its responsible and competent regular employees in order to insure that the said equipment complies with parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and Accessories Necessary for Safe Operation," and "Inspection and Maintenance," and if explosives or other

dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure that they or it complies with part 7 of the said safety regulations pertaining to "safe transportation of explosives." The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection discloses that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken. In all instances in which the inspection required by this rule is made by an employee, the authorized carrier, if an individual, or a member of the copartnership if the authorized carrier is a copartnership, or one of the officials thereof if the authorized carrier is a corporation, shall certify on the inspection report that the employee who made the inspection is a responsible and competent employee:

REPORT OF VEHICLE INSPECTION

Description of vehicle: Make _____ Year _____ Model _____
Serial No. _____
Type: Tractor _____ Trailer _____ Semitrailer _____
License plate: No. _____ State _____
Owner's name _____
Name of authorized carrier _____

Indicate in the proper column the result of the inspection of each item listed:

Item	*Not defective*	*Defective*	*Description of defect*
Body			
Brakes			
Cooling system			
Drive line			
Emergency equipment			
Engine			
Exhaust			
Fuel system			
Glass			
Horn			
Leaks			
Lights (state which)			
Reflectors			
Speedometer			
Springs			
Steering			
Tires			
Wheels			
Windshield wiper			
Any other items requiring attention			

I hereby certify that on the ____ day of _____, I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection.

_____
(Signature of person making inspection.)

I hereby certify that on the date stated above the person who made the inspection covered by this report is a responsible and competent regular employee.

Date _____

_____
(Signature of authorized carrier or copartner or officer of authorized carrier.)

(d) *Identification of equipment.*—The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment as operated by it when such equipment is operated by or for such carrier, the period of the lease, contract, or other arrangement, in accordance with the Commission's requirements in Ex Parte No. MC–41. If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1) The authorized carrier operating equipment under these rules shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(2) Unless a copy of the lease, contract, or other arrangement is carried on the equipment, as provided in rule 2–a (6) of these rules, the authorized carrier or his regular employee or agent shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, contract, or other arrangement, the period thereof, and any restrictions therein relative to the commodities to be transported which certificate shall be carried with the equipment at all times during the entire period of the lease, contract, or other arrangement.

(e) *Driver of equipment.*—Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under these rules, it shall be the duty of the authorized carrier to make certain that such driver is familiar with and that his employment as a driver will not result in violation of any provision of parts 2, 3, 5, and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of Motor Vehicles," "Parts and Accessories Necessary for Safe Operation," "Hours of Service of Drivers," and "Inspection and Maintenance," and to require such driver to furnish a certificate of physical examination in accordance with part 1 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of Drivers," or, in lieu thereof, a photostatic copy of the original certificate of physical examination, which shall be retained in the authorized carrier's file.

(f) *Record of use of equipment.*—The authorized carrier utilizing equipment operated under these rules shall prepare and keep a manifest covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment, the make, model, year, serial number, and the State registration number of the equipment, and the name and address of the driver operating the equipment, point of origin, the time and date of departure, the point of final destination, and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to these rules is operated there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers, together with the truck manifest, shall be preserved by the authorized carrier.

Rule 3—*Interchange of equipment.*—Common carriers of property may by agreement, contract, or lease, interchange any equipment defined in rule 1–b of these rules with other common carriers of property in connection with any through movement of traffic, under the following conditions.

(a) *Agreement providing for interchange.*—The contract, lease, or other arrangement shall be made between the carrier which owns the equipment and the carrier proposing to acquire the use thereof; shall specifically describe the equipment to be interchanged, the specific points of interchange, and the use to be made of equipment by the carrier which is not the owner thereof while in its possession; shall state the consideration for the use of the equipment; and shall be signed by the parties to the contract, lease, or agreement, or their regular employees or agents duly authorized to act for them.

(b) *Authority of carriers participating in interchange.*—The certificates of public convenience and necessity held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

(c) *Driver of interchanged equipment.*—Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and to the point of interchange and over the route or routes authorized in the participating carriers' respective certificates of public convenience and necessity.

(d) *Through bills of lading.*—The interlined traffic transported must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment. Charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions accruing to the carriers by the application of local or portional rates.

(e) *Inspection of equipment.*—It shall be the duty of the carrier acquiring the use of equipment in interchange to inspect such equipment, or to have it inspected by one of its responsible and competent employees for the purpose specified in rule 2–c of these rules, and equipment which does not meet the requirements of the safety regulations shall not be operated in the respective services of the interchange carriers until the defects have been corrected.

Rule 4—*Rental of equipment to private carriers and shippers.*

(a) *Renting equipment with drivers.*—Unless such service is specified in their operating authorities, authorized carriers are prohibited from renting equipment with drivers to noncarriers and shall not directly or indirectly assist such noncarriers to select or obtain drivers for equipment rented to them.

(b) *Removal of identification.*—Before the effective date of the lease, contract, or agreement for rental of equipment to noncarriers without drivers the authorized carrier shall cause to be removed from the equipment all marks of identification that indicate that such equipment is utilized in its operation, which marks shall not be restored until the termination of the agreement.

Rule 5—*Modification of or exemption from rules.*—Any of these rules may be modified, or any carrier may be granted exemption from any rule or rules, in the discretion of the Commission, and upon good cause shown, under the following conditions:

(a) *Application for modification or exemption.*—Application for modification of or exemption from a rule shall be made in writing, addressed to the Interstate Commerce Commission, Washington, D. C., and signed by the carrier seeking the modification or exemption, or regular employee or agent duly authorized to act for him, and shall specify the rule sought to be modified, or the rule from which exemption is sought, and the reasons therefor.

(b) *Notice of filing application.*—A copy of such application shall be sent by the applicant to its competitors, known to it, through the United States mails, and certification of such mailing shall be made by the applicant and attached to the application filed with the Commission.

(c) *Reply to application for modification or exemption.*—Competitors of the applicant shall have 15 days from the date of such notice in which to file replies to said application why the application should not be granted.

No. MC–57240

JET CARTAGE CO., DETERMINATION OF CONTROL AND OF ELIGIBILITY TO OPERATE UNDER SECOND PROVISO OF SECTION 206 (a) OF THE INTERSTATE COMMERCE ACT

Submitted May 13, 1949. Decided April 19, 1950

Operations described by Jet Cartage Co., as a common carrier by motor vehicle, in interstate or foreign commerce, solely within Illinois, found not to be operated, managed, or controlled, in common interest with those of Aztec Lines, Inc., as affects operation under the second proviso of section 206 (a) of the Interstate Commerce Act. Proceeding discontinued.

Kay Wood for applicant.

Earl Girard, *David Axelrod*, and *Eugene L. Cohn* for interveners in opposition.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

The order recommended by the examiners, to which no exceptions were filed, was stayed by us.

By a statement filed January 6, 1947, on Form BMC–75 as amended, Jet Cartage Co., a corporation of Chicago, Ill., hereinafter called Jet, gave notice of an intent to operate, in interstate or foreign commerce, as a motor common carrier of general commodities, between certain points in Illinois, under the exemption provided by the second proviso of section 206 (a) of the Interstate Commerce Act.

There appearing to be a possibility that Jet is and will be operated, managed, or controlled in a common interest with Aztec Lines, Inc., of Chicago, hereinafter called Aztec, a multiple State operator under authority granted in docket No. MC–82104, in a manner to destroy Jet's eligibility to engage in interstate or foreign commerce under the above-mentioned proviso of section 206 (a) of the act, the matter was assigned for hearing which has been held.

Jet maintains a terminal approximately 1½ blocks from Aztec's office and operates 2 trucks, 10 tractors, and 25 trailers, of which, 2 trucks, 6 tractors, and 5 trailers are leased. It is a local cartage company engaged principally in collecting and distributing freight in