

The Lease and Interchange of Vehicles in the Motor Carrier Industry

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I. IN GENERAL

The regulation of the lease and interchange of vehicles is necessary for the efficient management of the motor carrier industry.¹ The *Lease and Interchange of Vehicles* governs the use of equipment by authorized motor carriers when the equipment is not owned by the authorized carrier but, instead, is leased from the owner-operator or obtained by interchange with another authorized carrier.² Generally, “interchange” means “the physical exchange of equipment, usually trailers, between authorized common carriers, at some common point, and generally in the furtherance of a through movement of freight over the lines of such carriers.”³ Furthermore, the *Lease and Interchange of Vehicles* promotes the full disclosure between authorized carriers and owner-operators of the equipment.⁴ Specifically, it provides the detailed requirements necessary to form a valid contract between owner-operators and authorized carriers in the motor carrier industry.⁵

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1. See *Lease and Interchange of Vehicles*, 131 M.C.C. 141, 142 (1979) [hereinafter *1979 Lease and Interchange of Vehicles*].

2. *Am. Trucking Ass'ns v. United States*, 344 U.S. 298, 300 (1953).

3. *Lease and Interchange of Vehicles by Motor Carriers*, 52 M.C.C. 675, 678 (1951).

4. *1979 Lease and Interchange of Vehicles*, 131 M.C.C. at 142.

5. *Id.* at 141.

Regulation of the motor carrier industry began in 1935 and has since presented difficult problems in establishing fair practices for owner-operators and authorized carriers under the “grandfather” clauses of this act.⁶ During World War II (“the War”), many practices were sanctioned only because the Government was required to maximize motor-vehicle capacity and conserve fuel and tires.⁷ Consequently, “leasing among authorized carriers became more prevalent and widespread.”⁸ When the War was over, veterans returned to enter into business for themselves.⁹ Veterans were able to obtain financial aid to buy equipment and, as a result, the motor carrier industry grew.¹⁰

As the industry grew, so did complaints regarding practices of authorized carriers.¹¹ It was found that motor carriers “were augmenting equipment in times of heavy traffic with vehicles of other [authorized] carriers, exempt haulers, or private carriers, without a lease of any kind.”¹² The problem with this type of practice was, “[i]n instances where an authorized regular-route carrier permits another to operate over its certificated route under an ostensible vehicle lease, it is difficult at present to determine whether . . . an unauthorized and illegal operation is being conducted.”¹³

An example of such abuse occurred by an authorized carrier “possessing operating authority between Chicago, Illinois, and Louisville, Kentucky, but not beyond” Kentucky.¹⁴ The authorized carrier received a job, which required the cargo to be taken to points beyond Louisville.¹⁵ The authorized carrier purportedly arranged to have another carrier, with authority to perform the service, take the cargo beyond Louisville.¹⁶

The [authorized] carrier serving Chicago, however, performed all the transportation in its vehicles, using shipping documents of the local carrier, and retained all the revenue. It appeared that the local carrier permitted this in order to keep the good will of a shipper, and to prevent the Chicago carrier from obtaining operating authority beyond Louisville.¹⁷

Unlawful practices within the motor carrier industry could also be seen in situations where owner-operators employed under trip leases, “af-

6. *Lease and Interchange of Vehicles by Motor Carriers*, 52 M.C.C. at 679.

7. *Id.* at 682.

8. *Id.* at 683.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 685.

15. *Id.*

16. *Id.*

17. *Id.*

ter the completion of [their] one-way haul [were] ‘on their own.’”¹⁸ In most instances, the lessee made “no effort to obtain a return load for the operator.”¹⁹

Most of the carriers, including those which are substantial users of owner-operator equipment and oppose restrictions on trip leasing, concede that upon the completion of a trip they assume no responsibility for the owner-operator, and, as some of the owner-operators either do not carry public-liability and property-damage insurance or are unable to obtain it, protection for the public may be lacking In such instances, the opportunity is presented [to] the owner-operator to engage in unlawful transportation, if he can obtain a shipment.²⁰

In 1947, all members of the motor carrier industry were in agreement that some action should be taken to correct and eliminate the abuses within the industry, but they were unable to agree as to what measures should be taken.²¹

There were four main points of the proposed rules in the *1951 Lease and Interchange of Vehicles by Motor Carriers*.²² These main points were:

- [1.] All leases, except those leases between authorized carriers or in an emergency, must apply for not less than thirty days.
- [2.] Exclusive possession of a leased vehicle for the period of the lease, must be vested in the lessee
- [3.] Compensation for the rental of a vehicle obtained under [a] lease based upon a division or percentage of the revenue earned thereby, is prohibited.
- [4.] Except in the case of equipment (1) leased from another authorized carrier and operated over routes or within territory which the lessor and lessee are authorized to serve, or (2) utilized in the transportation of railway express shipments or in substituted motor-for-rail transportation, the driver of a leased vehicle must be an employee of the lessee.²³

In 1978, the Surface Transportation Board (“STB”) established four main objectives in the current *Lease and Interchange of Vehicles*.²⁴ The four objectives are:

- (1) to simplify existing and new leasing regulations and to write them in more understandable [language];
- (2) to promote truth-in-leasing . . . ;
- (3) to eliminate or reduce opportunities for skimming and other illegal or inequitable practices; and

18. *Id.* at 690.

19. *Id.*

20. *Id.*

21. *Id.* at 683.

22. *Id.* at 722.

23. *Id.*

24. *Lease and Interchange of Vehicles*, 129 M.C.C. 700, 700 (1978) [hereinafter *1978 Lease and Interchange of Vehicles*].

(4) to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry.²⁵

The purpose of the 1978 objectives is to expand the previous regulations governing the leasing of equipment in order to promote the principle of truth-in-leasing. The basic definition of truth-in-leasing is, "a full disclosure between the carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts signed by both parties."²⁶

The current rules and guidelines set forth in the *1978 Lease and Interchange of Vehicles* are based upon the findings of:

(1) a Bureau of Operations (BOP) Report on Motor Carrier Leasing Practices, August 1977; (2) a Bureau of Economics (BOE) Preliminary Report on the Independent Trucker, November 1977; (3) evidence gathered during congressional testimony before a special Subcommittee on the House Committee on Small Business; and (4) testimony presented during Commission field hearings around the country.²⁷

All the reports indicated a number of problem areas between authorized motor carriers and owner-operators.²⁸ These problems prompted the revision of the leasing rules to ensure that motor carriers measure up to their statutory responsibilities, to reduce the opportunity for abuses, and to guarantee that the transportation system functions smoothly.²⁹

The Interstate Commerce Commission ("ICC"), replaced on December 29, 1995 by the STB, maintains the authority to regulate the motor carrier industry.³⁰ However, many parties affected by the *1978 Lease and Interchange of Vehicles* claimed that the ICC lacked sufficient authority to issue regulations.³¹ In *American Trucking Associations v. United States*,³² the United States Supreme Court recognized that the Motor Carrier Act³³ ("the Act") does not explicitly grant authority to the ICC to regulate "the leasing of vehicles for the transportation of passengers or property by motor carriers in interstate or foreign commerce."³⁴ However, the

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *See id.*

30. RECORDS OF THE INTERSTATE COMMERCE COMMISSION [ICC], NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, ADMINISTRATIVE HISTORY 134.1 [hereinafter ICC RECORDS], available at <http://www.archives.gov/research/guide-fed-records/groups/134.html> (last visited Oct. 1, 2005).

31. *1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 702.

32. *Am. Trucking*, 344 U.S. at 298.

33. 49 U.S.C. § 304 (2000).

34. *1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 702-03 (citing *Am. Trucking Ass'ns v. United States*, 344 U.S. 298, 311-12 (1953)).

United States Supreme Court in *American Trucking* found that the ICC “holds implied power under section 204(a)(6) of the [Motor Carrier Act].”³⁵

[T]he [ICC]’s implied authority to issue leasing regulations may be related to a host of economic regulatory functions including: (1) requiring the filing of just and reasonable rates by common carriers and preventing the violation of these rates and the demoralization of rate structures generally under sections 216(b) and 218(a) of the act, (2) requiring continuous and adequate service under section 204(a)(1) of the act, (3) requiring the observance of authorized routes and termini under sections 208(a) and 209(b) of the act, (4) prohibiting unlawful rebates under sections 216(d), 217(b), 218(a), and 222(c) of the act, and (5) imposing safety regulations for vehicles and drivers (authority now vested in the Department of Transportation).³⁶

However, the ICC’s power to issue regulations is not unlimited.³⁷ Not only must regulations be in line with the enabling statute, but they must also be reasonable.³⁸

Many motor carriers consider the matters regulated by the ICC “to be of a purely private contractual nature.”³⁹ Some motor carriers argued that under sections 204(e) and (f) of the Act, the ICC was not authorized to “set a level or a method of compensation” for the authorized carriers.⁴⁰ The ICC was only entitled to require that the lease “specify the compensation.”⁴¹

The authorized carriers also argued that if the ICC “injects itself into such ‘private contractual matters,’” it will intrude upon the powers of the Department of Labor or the National Labor Relations Board.⁴² Furthermore, it was argued that sections 204(e) and (f) of the Act show a congressional intent not to allow the ICC the power to issue such regulations.⁴³ Lastly, a number of authorized carriers argued that the enactment of sections 204(e) and (f) of the Act preclude the holding in *American Trucking*.⁴⁴

Contrary to the arguments presented by the motor carriers, section 204(e) of the Act represents a specific congressional intent to impart the ICC’s authority to regulate such matters.⁴⁵ In fact, “[t]he congressional

35. *Id.* at 703 (citing *Am. Trucking Ass’ns v. United States*, 344 U.S. 298, 310 (1953)).

36. *Id.* (citing *Am. Trucking Ass’ns v. United States*, 344 U.S. 298, 310 (1953)).

37. *Id.*

38. *Id.* (citing *Int’l Ry. Co. v. Davidson*, 257 U.S. 506, 514 (1922)).

39. *Id.*

40. *Id.* at 703-04.

41. *Id.* at 704.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

purpose in enacting section 204(e) was to confirm the ICC's authority in this area, not to set fixed limits on the [ICC's] authority."⁴⁶ Moreover,

[S]ection 204(e) confirms the [ICC's] implied authority to prescribe: [s]uch other regulations as may be reasonably necessary to assure that motor carriers will have full direction and control of vehicles while they are being used under such leases, and will be fully responsible for the operation thereof in accordance with applicable law and regulation, as if they were the owners of the vehicles.⁴⁷

Additionally, as provided in the Senate Report,

The bill would enact into law powers that are intended to strengthen the authority of the Interstate Commerce Commission in dealing with safety in motor transportation. While it is true that the courts have held that some of this authority already rests with the [ICC] still it is believed advisable to make them law by enactment rather than by court decision.⁴⁸

Furthermore, "section 204(f) [of the Act] establishe[d] certain limitations on that authority with respect to leases that involved exempt authorized carriers."⁴⁹

The argument that the ICC may not constitutionally alter the terms of contracts is not valid.⁵⁰ The ICC's authority to issue regulations is based upon a statutory, not constitutional, basis.⁵¹ "The prohibition against impairing the obligation of contracts, found in article 1, section 10, clause 1 of the United States Constitution, runs only to the actions of the State[.]" not to federal actions.⁵² Additionally, the United States Supreme Court held that the due process clause of the Fifth Amendment does not prohibit the ICC from adopting lease and interchange rules.⁵³ The United States Supreme Court recognized that "[t]he rule making power is rooted in and supplements Congress' regulatory scheme, which in turn derives from the commerce power."⁵⁴

Currently, the adopted lease and interchange regulations "promote full disclosure between [authorized] carriers and owner-operators."⁵⁵ The final leasing rules issued by what is now known as the STB, attain the four main objectives of the *1979 Lease and Interchange of Vehicles*, partic-

46. *Id.*

47. *Id.* at 704-05 (citing H.R. REP. NO. 84-2425 (1956)).

48. *Id.* at 705 n.6 (citing S. REP. NO. 84-1271 (1955)).

49. *Id.* at 704.

50. *Id.* at 705.

51. *Id.*

52. *Id.*

53. *Id.* (citing *Am. Trucking Ass'ns v. United States*, 344 U.S. 298, 322 (1953)).

54. *Am. Trucking*, 344 U.S. at 322.

55. *1979 Lease and Interchange of Vehicles*, 131 M.C.C. at 141.

ularly the truth-in-leasing principle.⁵⁶ “Proposals for a uniform lease agreement have been rejected in order to allow the various types of carriers using owner-operators, and owner-operators themselves, the greatest latitude in establishing leases.”⁵⁷ However some portions of the lease must be uniform.⁵⁸ For example, the lease must disclose “[t]he cost of various operating expenses such as fuel, permits, tolls, and licenses”⁵⁹ Moreover, the lease must identify the following:

[A]ll items that may be charged-back to the [owner-operator], clearly state the insurance costs and responsibilities of each party, and specify the terms of any equipment purchase plan or rental contract that gives the [authorized] carrier the right to make deductions from the [owner-operator’s] compensation. The level of compensation to the owner[-operator] must be stated on the lease, the owner-operators must receive a copy of the freight bill, and payment of compensation must be made within 15 days of the submission of paperwork to the [authorized] carrier.⁶⁰

The majority of commissioners accept the basic truth-in-leasing concept.⁶¹ However, three of the commissioners would go further to protect the interests of owner-operators by setting minimum standards for the following items: “fuel, fuel taxes, empty mileage, permits, tolls, ferries, detention and accessorial services, base plates, licenses, and insurance.”⁶²

These Commissioners believe that owner-operators have assumed an increasingly important role in the national transportation system; that, despite their importance, they have little chance of individually bargaining any changes in any contract; and that some carriers will continue, wholly consistent with the truth-in-leasing rules, to pass the bulk of their transportation burdens on to the independent driver. These Commissioners believe that the independent should not have to assume all of the carrier’s business risks without having some access to the returns of the business.⁶³

Despite the commissioners’ beliefs mentioned above, three other commissioners “recognize[d] the vital role played by owner-operators, but believe that specific standards in these areas may tend to interfere with the independent status of the owner-operator and with the parties’ rights to contract.”⁶⁴ Additionally, the commissioners believe that, “any gains made by the independent in these areas could be offset by a corre-

56. *Id.* at 142.

57. *Id.*

58. *See id.* at 141.

59. *Id.*

60. *Id.*

61. *Id.* at 144.

62. *Id.*

63. *Id.*

64. *Id.*

sponding reduction in the rate of compensation specified in the lease.”⁶⁵

II. SCOPE OF REGULATIONS

The general scope of the lease and interchange regulations applies to all authorized property carriers under 49 U.S.C. §§ 13901 and 13902.⁶⁶ More specifically, 49 C.F.R. § 376.1 regulates the actions of motor carriers who transport property and who are registered with the Secretary.⁶⁷ Pursuant to 49 C.F.R. § 376.1:

The regulations in this part apply to the following actions by motor carriers registered with the Secretary to transport property:

- (a) The leasing of equipment with which to perform transportation regulated by the Secretary.
- (b) The leasing of equipment to motor private carrier or shippers.
- (c) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary.⁶⁸

III. GENERAL REQUIREMENTS

Only under certain conditions may a motor carrier perform authorized transportation in equipment that it does not own.⁶⁹ There must be a written lease “granting the use of the equipment and meeting the requirements contained in 49 C.F.R. § 376.12.”⁷⁰ For example, a lease under 49 C.F.R. 376.11(a) must: (1) be made between the authorized carrier and the owner-operator of the equipment; (2) be signed by the parties or by their authorized representatives; (3) specify the duration; and (4) clearly specify the compensation to be given.⁷¹

A motor carrier must provide receipts for the equipment, which identify the equipment leased as well as specify the date and time transfer of possession is to occur.⁷² The authorized carrier is required to give the owner-operator of the equipment a receipt once the authorized carrier takes possession of the equipment, which may be given “by mail, telegraph, or by other similar means of communication.”⁷³ Conversely, if so required by the lease, a receipt must be given when the authorized carrier’s possession of the equipment ends.⁷⁴ Similarly, “[a]uthorized repre-

65. *Id.*

66. 49 U.S.C. §§ 13901, 13902.

67. 49 C.F.R. § 376.1 (2005).

68. *Id.*

69. *Id.* § 376.11.

70. *Id.* § 376.11(a).

71. *Id.* § 376.12(a), (b), (d).

72. *Id.* § 376.11(b).

73. *Id.* § 376.11(b)(1).

74. *Id.* § 376.11(b)(2).

sentatives of the [authorized] carrier and the owner-operator may take possession of the leased equipment and give and receive the receipts required under this subsection.”⁷⁵

Moreover, the owner-operator’s equipment must be identified with both the authorized carrier’s name and Department of Transportation (“DOT”) numbers.⁷⁶ Additionally, the authorized carrier must keep a statement with the equipment certifying that the authorized carrier is operating the equipment during the length of the lease, unless a copy of the lease is carried on the actual equipment.⁷⁷ The statement must include: “[1] the name of the owner, [2] the date and length of the lease, [3] any restrictions in the lease relative to the commodities to be transported, and [4] the address at which the original lease is kept by the authorized carrier.”⁷⁸

Furthermore, 49 C.F.R § 376.11(d) requires that the authorized carrier using the equipment keep certain records of the equipment.⁷⁹ The authorized carrier must “prepare and keep documents covering each trip for which the equipment is used in its service.”⁸⁰ The documents must include “the name and address of the owner of the equipment, the point of origin, time and date of departure, and the point of final destination.”⁸¹ Also, papers identifying the lading and indicating that the transportation is under the authorized carrier’s responsibility are to be kept with the equipment.⁸² A lease containing the above-mentioned information may be used instead of documents and papers.⁸³ In regards to lease agreements negotiated under a master lease, a copy of the master lease must be kept with the equipment and any extra information required, needs to be included in the freight documents prepared for the specific trip.⁸⁴

IV. WRITTEN LEASE REQUIREMENTS

Certain provisions must be adhered to in order to make a written lease valid under the regulations.⁸⁵ As previously stated, the lease must be made between the authorized carrier and the owner-operator of the

75. *Id.* § 376.11(b)(3).

76. *Id.* § 390.21(b)(1), (2).

77. *Id.* § 376.11(c)(2).

78. *Id.*

79. *Id.* § 376.11(d).

80. *Id.* § 376.11(d)(1).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* § 376.12.

equipment.⁸⁶ Also, the lease must to be signed by the authorized carrier and the owner-operator or their authorized representative.⁸⁷ The lease must state the date and time when the lease begins and ends, and those dates and times must coincide with the receipt times.⁸⁸ Additionally, the lease has to state that the authorized carrier has exclusive possession, control, and use of the equipment for the duration of the lease.” The lease must also provide that the authorized carrier has “assume[d] complete responsibility for operation of the equipment for the duration of the lease.”⁸⁹

Section 204(e)(1) of the Act permits the STB “to require that the lease specify the compensation to be paid” to the owner-operator.⁹⁰ The amount of compensation to be paid by the authorized carrier for the equipment and driver’s services “shall be clearly stated on the face of the lease or in an addendum which is attached to the lease.”⁹¹ Such lease or addendum needs to be provided to the owner-operator of the equipment or its authorized representative before the commencement of any trip in the service of the authorized carrier.⁹² “The amount to be paid may be expressed as a percentage of the gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease.”⁹³

V. SPECIFIC ITEMS IN LEASE

The lease must clearly specify the responsible party for removing the authorized carrier’s identification from the equipment at the end of the lease and how the devices will be returned to the authorized carrier.⁹⁴ If the lease requires any receipts, the lease must specify how the receipts will be issued upon termination of the lease.⁹⁵ Additionally, the lease must identify whether the owner-operator or the authorized carrier is responsible for the “cost of fuel, fuel taxes, empty mileage, permits . . . , tolls, ferries, detention and accessorial charges, base plates and licenses, and any unused portions of such items.”⁹⁶ The party responsible for the loading and unloading of freight and any compensation for this service

86. *Id.* § 376.12(a).

87. *Id.*

88. *Id.* § 376.12(b).

89. *Id.* § 376.12(c)(1).

90. *1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 706.

91. 49 C.F.R. § 376.12(d).

92. *Id.*

93. *Id.*

94. *Id.* § 376.12(e).

95. *Id.*

96. *Id.*

must also be determined in the lease.⁹⁷

The lease shall specify the authorized carrier's responsibility to assume any liability for fines incurred from overweight or oversize loads where the trailers are pre-loaded, sealed, containerized or otherwise outside of the owner-operator's control.⁹⁸ Furthermore, it must be stated that the authorized carrier is responsible for improperly permitted shipments, unless the fine results from an owner-operator's acts or omissions.⁹⁹ If the owner-operator pays any fines incurred by the authorized carrier, the authorized carrier must reimburse the owner-operator for the fines paid.¹⁰⁰

VI. COMPENSATION AND SETTLEMENT

The STB's authority to require motor carriers to pay owner-operators within a specified time is "premised on the [Board's] duty under the national transportation policy to promote a smoothly functioning transportation system"¹⁰¹ It is also based upon the Board's authority under section 204(a)(1) of the Act "to establish reasonable requirements regarding continuous and adequate service."¹⁰² The authorized carrier must make payment to the vehicle owner-operator within fifteen days "after submission of the necessary delivery documents and other paperwork regarding a trip"¹⁰³ The theory behind the prompt payment is, if owner-operators are not compensated in a timely manner, they may experience a cash shortage.¹⁰⁴ The lack of cash could ultimately end in the business closing or in transportation service disruptions.¹⁰⁵ In order for the owner-operator to receive payment, the authorized carrier is required to submit logbooks to the DOT as well as "documents necessary for the authorized carrier to secure payment from the shipper."¹⁰⁶ The authorized carrier may require the owner-operator of the equipment to submit additional documents, but not as a condition of payment.¹⁰⁷ Furthermore, payment to the owner-operator cannot be "contingent upon submission of a bill of lading to which no exception has been taken."¹⁰⁸ The authorized carrier may withhold final settlement until the owner-operator has

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 706.

102. *Id.*

103. 49 C.F.R. § 376.12(f).

104. *1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 706.

105. *Id.*

106. 49 C.F.R. § 376.12(f).

107. *Id.*

108. *Id.*

returned the authorized carrier's identification devices, except for those painted directly onto the equipment.¹⁰⁹ If the identification device has been lost or stolen, the owner-operator may provide a letter certifying its removal.¹¹⁰

When the owner-operator of the equipment is paid a percentage of the revenue, the lease must state that the owner-operator will be provided with a copy of the rated freight bill or computer-generated summary, before or at the time of settlement.¹¹¹ The owner-operator is permitted to examine copies of the authorized carrier's tariffs or other documents necessary to verify rates and charges, but "the authorized carrier may delete the names of the shippers and consignees shown on the freight bill or other form of documentation."¹¹²

The lease must "specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the [owner-operator's]" final compensation.¹¹³ Also, the lease must state how charge-back items will be computed and that the owner-operator will be provided with copies of all the documents necessary to verify the validity of the charges.¹¹⁴

VII. PRODUCTS, EQUIPMENT AND SERVICES

The lease must state that the owner-operator "is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement."¹¹⁵ The terms of any equipment purchase or rental contract, which gives the authorized carrier the right to make deductions from the owner-operator's compensation for purchase or rental payments, must be clearly specified in the lease.¹¹⁶

VIII. INSURANCE OBLIGATIONS

The lease must state that the authorized carrier has the legal obligation to maintain insurance coverage for the protection of the public.¹¹⁷ The lease must also specify who is responsible for providing all other types of insurance coverage for the equipment, such as bobtail insurance.¹¹⁸ If the authorized carrier will make a charge-back to the owner-

109. *Id.*

110. *Id.*

111. *Id.* § 376.12(g).

112. *Id.*

113. *Id.* § 376.12(h).

114. *Id.*

115. *Id.* § 376.12(i).

116. *Id.*

117. *Id.* § 376.12(j)(1).

118. *Id.*

operator of the equipment for any of the insurance, the lease must specify the amount that will be charged back.¹¹⁹ If the owner-operator purchases any insurance coverage from or through the authorized carrier, the lease must specify that the authorized carrier will provide a copy of the policy upon the owner-operator's request.¹²⁰ When the insurance is purchased in this manner, the lease must further specify that the authorized carrier will provide the owner-operator with a certificate of insurance which states the following: (1) the name of the insurer; (2) the policy number; (3) the effective dates of the policy; (4) the amounts and types of coverage; (5) the cost to the owner-operator for each type of coverage; and (6) the deductible amount.¹²¹ The lease must clearly identify the "conditions under which deductions for cargo or property damage" will be made.¹²² Additionally, the lease must state that the authorized carrier is required to provide the owner-operator with a written explanation and itemization of any cargo or property damage deductions before the deduction is made.¹²³

IX. ESCROW FUNDS

If the owner-operator and authorized carrier determine that escrow funds are required, the lease must specify three things. First, that the owner-operator of the equipment must pay the amount of any escrow fund or performance bond to the authorized carrier or to an authorized third party.¹²⁴ Second, the specific items to which the authorized carrier can apply the escrow fund.¹²⁵ Lastly, "that while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the [owner-operator] of any transactions involving" the fund.¹²⁶

The accounting can be done in one of two ways.¹²⁷ The authorized carrier can provide individual statement sheets or a separate accounting given monthly to the owner-operator.¹²⁸ The lease must state the owner-operator's right at any time to have a separate accounting for any transactions involving the escrow fund.¹²⁹

While the authorized carrier is in control of the escrow fund, the

119. *Id.*

120. *Id.* § 376.12(j)(2).

121. *Id.*

122. *Id.* § 376.12(j)(3).

123. *Id.*

124. *Id.* § 376.12(k)(1).

125. *Id.* § 376.12(k)(2).

126. *Id.* § 376.12(k)(3).

127. *Id.*

128. *Id.* § 376.12(k)(3)(i), (ii).

129. *Id.* § 376.12(k)(4).

authorized carrier will pay interest on the fund.¹³⁰ The interest must be paid on at least a quarterly basis based upon the “average yield or equivalent coupon issue yield for a [ninety-one-day, thirteen-week] Treasury bill”¹³¹ The lease may specify that escrow will not be paid on the amount of the escrow fund equal to the average advance made to the owner-operator during the period of time for which interest is paid.¹³²

Also, the lease must state the conditions the owner-operator must fulfill in order to have the escrow funds returned.¹³³ When the escrow fund is returned, the authorized carrier may deduct any amount owed for obligations incurred by the owner-operator as previously specified in the lease, and “shall provide [the owner-operator with] a final accounting” of the deduction amount.¹³⁴ Furthermore, the lease must state that the escrow funds will be returned no later than forty-five days from the date of the termination of the lease.¹³⁵

X. PERMISSIVE ITEMS

The lease must provide for the receipt of the equipment at the lease’s end.¹³⁶ The lease must also provide for the authorized carrier to be considered as the owner-operator of the equipment for the purpose of sub-leasing the equipment to other authorized carriers.¹³⁷ “The compensation stated on the lease or in the attached addendum may apply to equipment and driver’s services either separately or as a combined amount.”¹³⁸ The owner-operator may require additional documents, other than logs and documents necessary for freight billing, but not as a prerequisite to a settlement within fifteen days.¹³⁹

XI. ACTION ITEMS

The lease or the addendum regarding compensations shall be delivered before or at the trip’s commencement.¹⁴⁰ The owner-operator shall receive a refund or credit for base plates purchased by the owner-operator from the authorized carrier as a prorated portion of the proceeds from the subsequent sale.¹⁴¹ “The authorized carrier shall not set time

130. *Id.* § 376.12(k)(5).

131. *Id.*

132. *Id.*

133. *Id.* § 376.12(k)(6).

134. *Id.*

135. *Id.*

136. *Id.* § 376.12(e).

137. *Id.* § 376.12(c)(2).

138. *Id.* § 376.12(d).

139. *Id.* § 376.12(f).

140. *Id.* § 376.12(d).

141. *Id.* § 376.12(e).

limits for the [owner-operator's] submission . . . of required delivery documents and other paperwork."¹⁴² The owner-operator must be given copies of the documents necessary to determine the validity of charge-back items.¹⁴³ A written explanation and itemization of deductions for cargo or property damages must be delivered to the owner-operator before any deductions can be made.¹⁴⁴ "At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the [owner-operator] which have been previously specified in the lease, and shall provide [the owner-operator with] a final accounting" of any deductions taken.¹⁴⁵ The parties to the lease must sign an original and two copies of the lease.¹⁴⁶ The authorized carrier will keep the original copy of the lease.¹⁴⁷ Unless a copy of the lease is carried on the equipment itself, the authorized carrier shall keep a certificate asserting the validity of the authorized carrier's operation of the equipment on the equipment.¹⁴⁸

XII. HOUSEHOLD GOODS CARRIERS

"When an authorized carrier of household goods leases equipment for the transportation of household goods, . . . the parties may provide in the lease that the [authorized carrier will have exclusive possession, control, and use of the equipment] only during the time the equipment is operated by or for the authorized carrier," rather than for the duration of the lease.¹⁴⁹ Some instances of leasing equipment involve owner-operators whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of the authorized carrier, rather than the authorized carrier itself.¹⁵⁰ "In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in paragraphs (d) – (k) of [49 C.F.R. 376.12]."¹⁵¹

XIII. CONCLUSION

The regulation of the motor carrier industry is a detailed, in-depth process which attempts to ensure the smooth functioning of the lease and

142. *Id.* § 376.12(f).

143. *Id.* § 376.12(h).

144. *Id.* § 376.12(j)(3).

145. *Id.* § 376.12(k)(6).

146. *Id.* § 376.12(l).

147. *Id.*

148. *Id.*

149. *Id.* § 376.12(c)(3).

150. *Id.* § 376.12(m).

151. *Id.*

interchange of vehicles. Not only does the management of the motor carrier industry prevent abuses against both owner-operators and authorized carriers, but it also ensures the reliable movement of goods throughout the United States. The management and regulation of the motor carrier industry has long been an imperative necessity to the transportation community, and it will continue to be of great importance in the industry's future growth.