A. from Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. Kyle will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

+B. from Belleville (milepost 187.0) to Mahaska, Kansas (milepost 170.0) a distance of approximately 17 miles.

+C. from Belleville (milepost 225.34) to Clay Center, Kansas (milepost 178.37) a distance of approximately 47 miles.

22. *North Central Texas Railway, Inc (NCTR):*

A. from Chico, Texas (milepost 562) to Dallas (North Junction), Texas (milepost 643.8).

B. Joint right-of-way district between Dallas (North Junction) and Endot, Texas (milepost 646.4).

23. *Enid Central Railway, Inc. (ENIC):*

A. from Enid, Oklahoma (milepost 345.27) to Kremlin, Oklahoma (milepost 330.03), including operations on the Ponca City Branch line from milepost 0.02 to milepost 0.30.

B. from North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8).

24. *North Central Oklahoma Railway, Inc. (NCOR):*

A. from Mangum, Oklahoma (milepost 97.2) to Chickasha, Oklahoma (milepost 0.0).

B. from Richards Spur, Oklahoma (milepost 486.45) to Anadarko, Oklahoma (milepost 463.39).

C. from Chickasha, Oklahoma (milepost 434.69) to El Reno, Oklahoma (milepost 400.31).

D. from El Reno, Oklahoma (milepost 513.31) to Council, Oklahoma (milepost 494.5).

25. *South Central Arkansas Railway, Inc. (SCAR):*

A. from El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).

26. *Burlington Northern Railroad Company (BN):*

A. at Burlington, Iowa (milepost 0 to milepost 2.06).

B. at Okeene, Oklahoma.

C. at Lawton, Oklahoma.

27. *Fort Worth and Denver Railway Company (FWD):*

A. from Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.

B. at North Fort Worth, Texas (mileposts 603.0 to 611.4).

C. from Amarillo, Texas (milepost 760.6) to Groom, Texas (milepost 718.9).

28. *Okarche Central Railway, Inc. (OCRI):*

A. from Enid, Oklahoma (milepost 345.27) to El Reno Junction, Oklahoma (milepost 405.21).

B. from El Reno, Oklahoma (milepost 514.32) to Council, Oklahoma (milepost 496.40).

C. at El Reno, Oklahoma (milepost 402.73) to (milepost 404.19).

Note.—Certain segments of the above operation are overlapping with the NCOR (see Item 24). In the interest of operational clarity and efficiency, OCRI will be the supervising carrier for operations and maintenance.

+Added.
*Changed.

[FR Doc. 82-17610 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-7A)]

Lease and Interchange of Vehicles (Leases Involving Carrier Agents)

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its leasing rules to clarify further which parties and leases are subject to them and which are not. One rule change will specifically exempt leases made between authorized carriers and their agents from the leasing regulations set forth at § 1057.12(e)-(1). A second will clarify that the obligation of an authorized carrier to ensure that the owner of the equipment receives all of the rights, benefits, and protections of the leasing regulations cannot be avoided simply by acting through an agent. This duty on the carrier's part will apply irrespective of whether the carrier leases the equipment directly from the equipment owner or indirectly through an intermediary third-party agent.

EFFECTIVE DATE: August 30, 1982.

FOR FURTHER INFORMATION CONTACT: Ombudsman's Office, (202) 275-7863; Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the **Federal Register** on November 23, 1977, the Commission instituted a rulemaking proceeding in Ex Parte No. MC-43 (Sub-No. 7), *Lease and Interchange of Vehicles*, for the purpose of rewriting and revising its leasing rules. The major objectives of that proceeding were to: (1) Simplify existing and new regulations; (2) promote truth-in-leasing—full disclosure between carriers and owner-operators; (3) eliminate or reduce opportunities for skimming and other illegal or inequitable practices; and (4) promote the stability and economic welfare of the independent trucker segment of the motor carrier industry. Several Commission staff studies, independent trucker surveys, Congressional and Commission hearings, and public comments on the matter had preceded and precipitated the rulemaking. Information gathered from these various sources revealed that owner-operators—a significant factor in America's transportation system—were experiencing significant problems, some of which could be traced to certain leasing practices at 44 FR 4680, January 23, 1979.

The Commission issued final rules in January 1979 at 44 FR 4680, January 23, 1979. *Lease and Interchange of Vehicles*, 131 M.C.C. 141 (1979). Those rules were affirmed in *Global Van Lines, Inc.* v. *I.C.C.* 627 F.2d 546 (D.C. Cir. 1980). During the course of the rulemaking process, however, two minor issues remained unresolved: first, whether the new leasing rule requirements appearing at 49 CFR 1057.12(e)-(1) should apply to leases between motor carriers and their agents, and, second, whether authorized motor carriers could avoid their responsibility under the leasing regulations by using agents for dealing with owner-operators.

Two new proposed rules[1] designed to clarify these matters were published in the **Federal Register** at 45 FR 13159, February 28, 1980, and interested parties were invited to submit written comments on the proposals. Upon review of the comments we have decided to amend our leasing regulations as proposed and (i) to exempt leases made between authorized carriers and their agents, and (ii) to ensure that the duty of carriers under the leasing rules will be the same whether or not they employ an agent as an intermediary.

Principal Arguments of the Parties

The American Movers Conference and number of individual motor carriers of household goods support the Commission's proposal to exempt leases made between authorized carriers and their agents from the new leasing regulations. However, the van lines are opposed to the proposal which would make them responsible for ensuring that owner-operators receive all the rights and benefits of the rules in situations where intermediary agents are involved. The carriers' basic arguments are: (1) The Commission lacks jurisdiction to promulgate such a regulation; (2) holding a carrier responsible for a lease concluded between two parties not within the Commission's jurisdiction, and to which it is not a party, is a violation of contract law principles; (3) holding a principal liable for payment of compensation, et cetera, between an agent and an independent contractor, or not allowing the principal to limit the scope of its agency relationship, is a violation of agency law principles; (4) the administrative and other costs of ensuring such compliance—both to the

[1] Section 1057.12(n) *Carrier obligations to owner regardless of presence of agent*, and § 1057.26 *Exemption for leases between authorized carriers and their agents.*

van lines and to consumers—outweigh any possible public benefits that might stem from such a regulation; (5) promulgation of such a rule is likely to interfere with labor matters—an area clearly beyond the Commission's expertise and jurisdiction; (6) because van lines are not directly involved in arrangements between their agents and owner operators, policing and enforcement of such a regulation would be impractical if not impossible; and (7) there is insufficient support in the record to establish a need for such a regulation.

The Commission's's Office of Special Counsel (OSC) fully supports both proposals. Regarding § 1057.12(n), it believes that owner-operators need prompt payment regardless of the party with whom they contract for the lease of their equipment. In fact, OSC would favor explicit, standard language in the lease between the van line and its agent specifying the latter's agreement to comply with the new leasing regulations.

The primary concern of the National Independent Truckers Unity Council is that its members be paid within 15 days from the date of submission of proper paperwork to the carrier. Accordingly, it strongly supports holding carriers fully and ultimately responsible for ensuring that their agents timely pay their owner-operators.

A carrier which leases owner-operator equipment through agents argues that the rules should only be applied to household goods agency situations and no others. It claims that non-household goods agency arrangements are more complex and require additional processing of paperwork which would make compliance extremely difficult if not impossible.

Finally, a single agent contents that agents do, in fact, need the protections of the rules, because they cannot timely pay their owner-operators if they are not timely paid by the van lines.

Discussion and Conclusions

We now believe that the two new proposed rules should be adopted.

We believe, to begin with, that agreements between motor carriers and their agents should, in fact, be exempted from the new leasing rules. In our notice of proposed rulemaking [2] we stated:

> We cannot ignore the fact that not a single agent requested coverage under the new leasing rules. The record so far in this proceeding just does not demonstrate a sufficient need on the part of agents for the application of any of the new leasing rules to leases between authorized carriers and their agents.

The fact that only one agent filed comments in response to the proposed rule serves only to buttress that conclusion. Agents as a class simply have not demonstrated a need or desire for such protections as may be afforded by the new regulations. Moreover, we do not believe that subjecting the carrier-agent relationship to those rules is necessary to achieve our objectives in this proceeding. Therefore, the rule excluding carrier-agent leases from coverage by the new leasing rules will be adopted.

We also believe, despite opposition from van lines and their organizations, that motor carriers should not be exempt from responsibility for ensuring that owner-operators performing transportation services on their behalf receive all the rights, benefits, and protections of the new leasing rules simply because carrier agents are employed as intermediaries. Each of the various arguments advanced by parties in opposition to § 1057.12(n) has previously been carefully considered and rejected either in the interim and final decisions in the Sub-No. 7 proceeding or in the notice of proposed rulemaking in this proceeding. However, we will again briefly address the more significant objections.

With respect to the jurisdictional issue, at 129 M.C.C. 702 and 703 of the Sub-No. 7 interim decision we stated:

> The Supreme Court held in *American Trucking Associations, Inc.* v. *United States*, 344 U.S. 298 (1953), that the power to regulate equipment leasing lies within the broad provisions of the act even though such authority was not then explicitly set forth. The Court found that the Commission holds implied power under section 204(a)(6) of the act [49 U.S.C. 304(a)(6)] to issue rules that concern the leasing of vehicles for the transportation of passengers or property by motor carriers in interstate or foreign commerce * * * Of course, the power to issue regulations is not unlimited. Regulations must be consistent with the enabling-statute and must be reasonable * * * With these guidelines in mind, we believe that we hold the authority under the act to issue regulations aimed at acomplishing a fair measure of truth-in-leasing.

None of the jurisdictional arguments raised in the comments alters our belief that this Commission does, in fact, have jurisdiction to adopt the new substantive leasing rules at issue here, including § 1057.12(n). These rules merely regulate, in what we believe to be a reasonable manner, the way in which an authorized carrier may lease equipment—an undertaking clearly sanctioned by the *American Trucking Associations* case and, more recently, the *Global Van Lines* case, *supra*.

We reject the notion that our regulations may not be adopted because they purportedly conflict with conventional agency principles. Congress has given the Commission authority to regulate the surface transportation industry and our authority to adopt reasonable leasing regulations governing the relationship between carrier and lessor has been sustained. Our decision here is a modest modification of existing rules designed to ensure simply that carriers cannot avoid the rules through the establishment of an intermediary agent. We have no doubt of our authority in this area.[3]

We also reject the carriers' contention that compliance on their part will be too difficult and that ensuring compliance on the part of their agents will be impossible. Major obstacles cited by the carriers include unrealistic time frames, no incentive for agents to comply or means of assuring their cooperation, and the magnitude of the task. We believe that time frames concerning such areas as payment and refund of escrow accounts are reasonable.[4] We also believe that the significant leverage which carriers exert over their agents is sufficient incentive for compliance on the part of the latter. Moreover, carriers can both protect themselves and better assure their agents' cooperation by including appropriate provisions in agency agreements and leases concluded with their agents. However, we will not, as suggested by OSC, dictate the terms of those provisions. We believe that is a matter best left to the parties involved. Finally, it is our belief that selective policing by carriers of their agents' behavior—as in the household goods weight-bumping area—

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[2] 45 FR 13159 (February 28, 1980).

[3] We mention, in this connection, our recent decision in *North American Van Lines, Inc.—Invest. & Revoc. Of Certifs.*, 132 M.C.C. 66 (1980), where we concluded that household goods carriers should be held accountable for the acts of their agents. At page 71 Division 2 stated: ". . . [T]he Interstate Commerce Act provides for regulation of the carrier, not of its individual employees, and clearly places the responsibility for compliance upon the carrier. A carrier cannot escape this responsibility by attributing violations to its employees or agents. The Duty which Congress has placed on the Commission to regulate motor carriers under the act can be effectively performed only by holding the carriers accountable.

[4] Carriers are reminded that they can petition to have time frames modified in light of later convincing concrete evidence to the effect that present compliance is impossible or inequitable. At this time we simply do not find that the carriers have established their inability to comply with the 15-day payment period or refund of escrow provisions. Carriers are also reminded that the 15-day payment period does not begin to run until all appropriate paperwork has been submitted to them.

is a reasonable alternative to carriers' fears that they will have to monitor each and very case involving owner-operators and should ensure a sufficient level of agent compliance.

Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-354, approved by the President on September 19, 1981, requires agencies to prepare a regulatory flexibility analysis outlining the effect of a proposal on small entities. The Act applies, in terms, however, only to proposals issued after January 1, 1981. Our action here, of course, is simply the final stage of proposals put forward long ago, and even our notice of proposed rulemaking dealing with the two minor items specifically at issue were published in the **Federal Register** over a year ago. As a consequence, the regulatory flexibility analysis portion of that Act is inapplicable.

The Act nevertheless requires periodic review of agency regulations which will have a significant economic impact upon a substantial number of small entities. The leasing regulations may well be a proper subject for overall reexamination.

Final Rules

The Commission is adopting two new leasing rules in final form. One will merely codify in the form of an exemption the Commission's previous decision that the new leasing rules appearing at 49 CFR 1057.12(e)-(1) do not apply to leasing arrangements between motor carriers of household goods and their agents. Moreover, because that decision was not totally clear as to whether the exemption was limited just to motor carriers of household goods, this final rule will clarify the point by extending the exemption to all authorized carriers.

A second rule will codify the responsibility of all motor carriers to ensure that owner-operators performing transportation on their behalf and pursuant to their authority receive all the rights, benefits, and protections of the new substantive leasing rules, irrespective of the presence of an agent. The second rule simply clarified the Commission's intent that motor carriers not be able to circumvent any of its leasing rules merely by leasing equipment from an intermediary third-party agent rather than directly from the equipment owner. The rule will further provide that this obligation must be specified in the written lease.

We find that these additions to the leasing rules are necessary so that all potential parties to leases may examine our leasing rules and determine what rights and duties thay have under these rules before entering into a lease.

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

It is ordered:

We adopt the rules set forth below:

1. In 49 CFR 1057.12 and a new paragraph (n) as follows:

§ 1057.12 Carrier obligation to owner regardless of presence of agent.

* * * * *

(n) This subsection applies to owners who are not agents but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. 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 (e)-(1) of this section. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation.

2. In 49 CFR add a new § 1057.26 as follows:

§ 1057.26 Exemption for leases between authorized carriers and their agents.

The leasing regulations set forth in § 1057.12(e)-(1) do not apply to leases between authorized carriers and their agents.

This decision does not affect significantly the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1057

Motor carriers.

(49 U.S.C. 10321 and 11107, and 5 U.S.C. 553)

Decided: June 22, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Andre concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Andre, concurring:

I concur in the result to extend the Commission's lease disclosure rules. However, as I did not participate in the origination of this program, I reserve final judgment on its merits pending outcome of the review which has apparently been promised in connection with our Regulatory Flexibility responsibilities.

[FR Doc. 82-17618 Filed 6-29-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 2622-113]

Atlantic Sea Scallop Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of emergency interim rule.

SUMMARY: An emergency interim rule is in effect through June 28, 1982, implementing the Fishery Management Plan for Atlantic Sea Scallops. NOAA extends the emergency interim rule from June 29, 1982, through August 12, 1982. The extension will continue the management program and its protection of the resource while public comments are considered in preparing final regulations for the fishery.

DATES: Emergency interim rule effective from June 29, 1982, through August 12, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Scallop Management Coordinator, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097; telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Sea Scallops (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on April 26, 1982. Emergency interim regulations implementing the FMP, with a request for public comments, were published on May 14, 1982 (47 FR 20776). The rulemaking stated that the regulations would be effective for 45 days and that they would be repromulgated for an additional 45 day period, if necessary, as authorized by section 305(e) of the Magnuson Fishery Conservation and Management Act. Comments were accepted through June 28, 1982.

The Assistant Administrator for Fisheries has determined that the emergency situation described in the initial rulemaking continues to exist. This action therefore extends those emergency regulations through August 12, 1982. During this period, public comments received during the initial rulemaking period will be considered in the preparation of final regulations, which should be issued on or before August 12, 1982.

Other Matters

The Administrator of NOAA determined on May 14, 1982 (47 FR 20776) that these regulations are non-major under Executive Order 12291, and at the same time that the emergency provisions of Section 8 of Executive Order 12291 apply to this rulemaking.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: June 24, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 82-17848 Filed 6-28-82; 1:56 pm]

BILLING CODE 3510-22-M