FMCSA POSITION ON UCR BOARD OF DIRECTORS PROCEDURES SUBCOMMITTEE RESOLUTIONS— JANUARY 14, 2008

Resolution Item No 1: Whether a motor private carrier includes passenger operations and if not, they are not required to register under UCRA?

Discussion:

This issue was raised concerning the question whether an organized church needs to register passenger operations under UCR for transporting its church members to and from church services or organized church activities.

Comments Received:

1) Yes. I think UCR applies to passenger motor private carriers designed for 15 or more even if not for compensation.

2) No. The UCR Agreement's definition of a motor private carrier is "… a person, other than a motor carrier, transporting property by motor vehicle when:
    (1) The transportation is as provided in 49 U.S.C. Section 13501;
    (2) The person is the owner, lessee, or bailee of the property being transported; and
    (3) The property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

   Motor private carrier of passengers is not subject to the UCR Agreement.

3) The definition of "motor carrier" does not apply or include private carriers. Section 13102 still requires a motor carrier to be providing transportation "for compensation" and motor private carriers are still defined as "transporting property". A vehicle used to transport more than 15 passengers, even if not for compensation, is still a commercial motor vehicle, but unless compensation is involved the carrier is not a motor carrier under 13102 and transporting passengers still does not meet the definition of motor private carrier.

4) If the entity is required to have a USDOT number, they will file under UCRA.

5) I believe the UCR Agreement needs to be modified to include motor private carriers of passengers. I believe that once a church bus operations fall under FMCSA (and requires a USDOT #), they require a UCR. Not only is a "truck is a truck is a truck", but I believe a "bus is a bus is a bus" and a "van is a van is a van".

6) It appears to me from the statute and our conversations with Scott Morris that "motor private carrier" refers to carriers of property only, and that a private passenger carrier is not a motor carrier of any kind – or any of the other entities subject to the UCRA, and so not required to file and pay the fees.

Recommendation to Board: None

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FMCSA Position:

Motor private carriers of passengers are not subject to the UCR fees. There is no definition in section 14504a of a "motor private carrier" required to pay UCR fees by section 14504a(f)(1). Therefore, the definition in 49 U.S.C. 13102(15) is controlling. The definition, in its entirety, is:

> The term "motor private carrier" means a person, other than a motor carrier, **transporting property** by commercial motor vehicle (as defined in section 31132) when--
>
> **(A)** the transportation is as provided in section 13501 of this title;
>
> **(B)** the person is the owner, lessee, or bailee of the property being transported; and
>
> **(C)** the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

The phrase "transporting property" in bold in the text above controls the entire definition. The fact that the definition, as amended by SAFETEA-LU, is now limited to transportation in commercial motor vehicles as defined in section 31132 (which includes language that refers to vehicles designed or used to transport passengers, in addition to vehicles over a certain weight), does not affect the operation of the "transporting property" phrase in section 13102(15). Note also the additional references in subparagraphs (B) and (C) to "property."

Resolution Item No 2: Should states refund monies if an entity paid UCR fees and they were not required to do so?

Discussion: None

Comments Received:

1) It seems to me that if an entity files and pays UCRA fees on a mistake of law – here, that it wasn't subject to the program when it thought it was or might be – it should get its money back.

2) Refunds may be issued on a case-by-case basis. In the event the Board determines a particular type of operation is not subject to UCR, the determination should be effective for the following registration year to reduce the number of refunds needed and ensure consistency across the board. UCR application information is not detailed enough to ascertain, in most cases, whether an operation is required to register or not. As such, it would be impossible to ascertain which fees should be refunded to which entities upon a blanket exemption determination. It is costly for an agency to process refunds – many times the cost of processing the refund exceeds the amount of the refund. Considering the underfunding of the UCR program at this point, adding a large number of refunds to the process will continue to contribute to the reduction in revenue to the program while continuing to increase States' cost of running the program.

Recommendation to Board: None.

FMCSA Position:

If a motor carrier entity is not subject to the fee, and paid in a mistaken or misinformed belief that it was subject to the fees, the payment should be refunded. Section 14504a(f)(4) states that motor carrier entities "shall pay all fees *required under this section* to their base-State…." (emphasis added). States cannot accept payment of fees not required by the statute.

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Resolution Item No 3: FMCSA's interpretation of a commercial motor vehicle conflicts with the interpretation currently used by the board. Does FMCSA's interpretation change the board's opinion as to the definition of a motor carrier (combined GVW versus GVW language).

Discussion:

"**Commercial motor vehicle**" (as defined under 49 UCS Section **31101**) means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle:

(1) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(2) Is designed to transport more than 10 passengers including the driver; or
Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. Section 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary.

"**Commercial motor vehicle**" (as defined under 49 UCS Section **31132**) means a self-propelled or towed **vehicle** used on the highways in interstate commerce to transport passengers or property, if the **vehicle**—

(A) has a gross **vehicle** weight rating or gross **vehicle** weight of at least 10,001 pounds, whichever is greater;
(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;
(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

Comments Received:

1) I don't know if I understand the issue here, but CMV is defined in 14504a, and it seems to me that the Board is bound by that definition.

2) It is difficult to understand factual reasoning behind FMCSA's interpretation. The board has nothing that documents the legislative intent to do anything but what is referenced in the law. The definition reference in the UCR Act does not reference definitions that include combined GVW language.

3) It makes no sense to not include the combined GVW vehicle under UCR – those vehicles are subject to USDOT regulations and should therefore be subject to UCR fees. If the operation of any vehicle requires a USDOT number, the vehicle should be subject to UCR.

4) I think it would be impossible to find all the carriers using these types of vehicles, especially if the carrier only used vehicles under 10,000 GVWR. This first year has proven the difficulty of getting those carriers registered that are operating vehicles with GVW or GVWR of 10,001 or more.

Recommendation to Board: To continue to interpret the act as written.

FMCSA Position:

The statutory definition in 49 U.S.C. 14504a(a)(1)(A), which incorporates by reference the definition in 49 U.S.C. 31101, is controlling. The definition of commercial motor vehicle in 49 U.S.C. 31132, which is different in some respects from the definition in section 31101, governs FMCSA's motor carrier safety jurisdiction.

Resolution Item No 4: If an entity does not fall under the definition of a motor carrier or motor private carrier pursuant to subchapter I of chapter 135 as referenced under the unreasonable burden section of the UCR Act, can state(s) collect fees and issue and require display of credentials if their state law provides for it?

Discussion: None

Comments Received:

1) I think the question may be worded a little too broadly to be answered either yes or no definitively. The statute says that carriers that aren't included under 135/I are included in UCR. For most purposes under Title 49, an exempt carrier isn't a "motor carrier." But it is for UCRA. But then we have such things as private passenger carriers, which don't seem to fit even the broader federal definition of carrier: not only aren't they subject to jurisdiction under 135, they aren't carriers at all. These things don't seem to fall under UCRA, and therefore, it seems to me, aren't under the preemptions either. Waste haulers might be in the same category as private passenger carriers, for instance, though I didn't check the statute to see.

2) Yes

3) This needs more discussion. If the Board determines a type of carrier is not subject to UCR (for example - trash haulers, church groups, use small vehicles and CVWR does not apply) then the next question to answer is whether the type of carrier is also exempt from state regulation.

Recommendation to Board: Motor carriers (for-hire or private) ~~or vehicles operated in~~ intrastate ~~commerce~~ that are exempted from UCR fees ~~(by law or by choice of the motor carrier)~~ may be subjected to regulations of the state in which operations are being conducted.

FMCSA Position:

As a general matter, the preemption provisions of section 14504a(c) are stand-alone provisions, and are not linked to the statutory provisions determining whether a motor carrier or motor private carrier is subject to the UCR registration and fee requirements. Unlike under SSRS (see former 49 U.S.C. 14504(b) and (c)(2)(C)), whether an entity is subject to the UCR registration does not determine whether other States fees and requirements are preempted. In any case, this is not a matter for determination by either the UCR plan or FMCSA, but by the courts.

Resolution Item No 5: Is a motor carrier or motor private carrier that operates solely in Hawaii required to file and pay under the UCRA?

Discussion: None

Comments Received:

1) No. Carriers operating in Hawaii, even though they may haul interstate freight, are exempt from the jurisdiction of the US DOT. Although the UCR Act makes most carriers not subject to DOT jurisdiction subject to the UCRA, the Board does not believe it was the intent of Congress to extend the UCRA to Hawaiian carriers, who, given that Hawaii is not participating in the UCR, do not operate in places subject to programs funded by proceeds of the UCRA program.

2) This needs more discussion. Washington took the initiative to send UCR notices to Hawaiian carriers. If the Board determines they are not subject to UCR, then WA may have a lot of refunds to issue, potentially dropping it below its entitlement cap and further complicating things for the UCR Depository Subcommittee in determining distribution of excess funds.

Recommendation to Board: None

FMCSA Position:

A motor carrier or motor private carrier operating in Hawaii could be subject to UCR registration. Although operations in Hawaii cannot cross a State line, under the applicable jurisdictional statute, 49 U.S.C. 13501, such entities can be engaged in the transportation of passengers or property in interstate or foreign commerce if: (1) it follows or precedes a prior or subsequent movement in interstate or foreign commerce; and (2) the facts and circumstances indicate a fixed intent for a continuous movement in interstate or foreign commerce. *Merchants Fast Motor Lines, Inc. v. I.C.C.*, 5 F.3d 911, 917-8 (5th Cir. 1993). In addition, the definition of "motor carrier" for the purpose of the UCR agreement includes "all carriers that are otherwise exempt … under subchapter I of chapter 135…." 49 U.S.C. 14504a(a)(5). This means that the several statutory exemptions that might apply to transportation in interstate and foreign commerce within Hawaii (e,g,. 49 U.S.C. 13503, 13504, and 13506) do not exempt such carriers from the UCR registration requirements.

Motor carriers that operate solely in Hawaii may be exempt from economic and commercial regulation under the exemption in 49 U.S.C. 13503, but they are not exempt from DOT safety jurisdiction. *Cf. Klitzke v. Steiner Corp.*, 110 F.3d 1465 (9th Cir. 1997).

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Resolution Item No 6: Are charitable and non-profit organizations subject to UCRA requirements?

Discussion: None

Comments Received:

1) Yes. There is no exemption for charities and non-profits in the UCR Act. However, charities that are chartered by government, such as the American Red Cross, are exempt as government entities.

Recommendation to Board: Charities and non-profits are not exempted from UCRA.

FMCSA Position:

Charitable and non-profit organizations conducting transportation operations that are within the applicable statutory definitions are subject to the UCR registration requirements. There is no exemption for entities "chartered" by the government, State or federal. The "government entity" exemption in 49 U.S.C. 31132(3)(B) only applies to FMCSA's authority to regulate motor carrier safety. It does not apply to the commercial regulatory provisions that include the definitions and jurisdictional provisions covering the UCR plan and agreement.