

Small Business in Transportation Coalition (SBTC): Federal Judge Rules Unified Carrier Registration Board of Directors violated Federal Sunshine Act (Open Meetings Law)

On October 18, 2017, a Federal Judge ruled that the Unified Carrier Registration Board of Directors violated the Federal Sunshine Act by failing to properly notice the Board's September 14, 2017 Board Meeting in the Federal Register. The Court found that the Secretary cannot lawfully adjust the UCR fees --through her designee FMCSA-- after the 90 day window under the enabling statute expired.

Washington, D.C. ([PRWEB](#)) October 23, 2017 -- The [Small Business in Transportation Coalition \("SBTC"\)](#), a motor carrier industry non-profit 501(c)(6) watchdog trade group representing more than 8,000 independent truckers, motor carriers, freight brokers, shippers and industry suppliers, announced today that a Federal Judge has ruled that the Unified Carrier Registration ("UCR") Board of Directors ("Board") did indeed violate the Federal Sunshine Act --as alleged by the trade group in a [lawsuit filed on September 27, 2017](#) Case 1:17-cv-02000-APM; 12 PERCENT LOGISTICS, INC. et al v. UNIFIED CARRIER REGISTRATION PLAN BOARD et al; Amit P. Mehta, presiding-- by holding an improperly noticed Board meeting on September 14, 2017, the trade group's president, James Lamb, said today.

According to the lawsuit complaint, the Board allegedly violated the Federal Sunshine Act (the U.S. Government's open meetings law) 5 U.S.C. § 552b, by holding an unnoticed, unlawful September 14, 2017 Board meeting. During that meeting, the Board postponed the annual UCR truck registration open date set by the "[UCR Agreement](#)," an interstate compact among 41 participating states, from October 1, 2017 to November 1, 2017 to allow time for Federal Motor Carrier Safety Administration ("FMCSA") rulemaking, which was published in the [Federal Register](#) on September 21, 2017 under Docket No. FMCSA-2017-0118, shortening the amount of time industry has to comply with the Federal UCR law from 90 to 60 days. SBTC argues this causes industry confusion at the 11th hour and as a result, many motor carriers may fail to comply and be fined up to \$1,100 per day in certain jurisdictions.

SBTC further argues in its complaint, that under 49 U.S. Code § 14504a, the Unified Carrier Registration System Plan, and UCR Agreement, specifically subsection (d)(7), the Secretary, or here the FMCSA to whom the Secretary delegated her authority to set UCR fees, see 82 Fed Reg at 44144, has 90 days to act to set the fees after receiving the Board's recommendation. SBTC contends that because the recommendation was submitted by the Board to the Secretary on March 22, 2017, and FMCSA failed to act during the 90 day window, current FMCSA rulemaking to change the UCR fees down for 2018 and back up again for 2019 is also illegal and actionable once a final rule is promulgated. SBTC argues that 11th hour rulemaking will cause a delay in the states receiving funds used for motor carrier safety and enforcement programs and thereby adversely affects public safety. The group points to a similar delay of eight months caused by FMCSA in 2009 when it last tinkered with the UCR fee schedule at the 11th hour, as well as a 2007 report from the [U.S. Office of Government Accountability that warns of the impact of such unreasonable delays on the states](#).

At the court hearing before the Honorable Judge Mehta on October 12th, 2017, Jim Bopp, counsel for SBTC explained to the judge that the UCR Board does not have the lawful authority to extend the December 31, 2017 UCR deadline set by the UCR Agreement for the 2018 UCR registration permit because each state has its own right to enforce its own laws regarding UCR compliance; so, the Board's act of reducing the compliance period

cannot possibly be cured by the Board.

In his decision on the SBTC's request for a preliminary injunction and temporary restraining order, issued on October 18, 2017, Judge Mehta ruled:

"On September 14, 2017, Defendant Unified Carrier Registration Plan Board ("Board") held a meeting in which it decided to postpone the start of the annual registration period for motor carriers, brokers, and freight forwarders from October 1, 2017, to November 1, 2017. The Board adopted the 30-day postponement to give the Secretary of Transportation more time to act on a rate reduction proposal that the Board had submitted to the Secretary six months earlier. The manner in which the Board noticed the September 14th meeting did not comply with federal law. Under the Sunshine Act, 5 U.S.C. § 552b, the Board was required to publicly announce meeting information. Although the Board notified prior Board-meeting attendees of the September 14th meeting, it failed to publish information regarding the meeting's time, location, and subject matter in the Federal Register, as required by the Sunshine Act... (emphases added)".

The UCR Board has now been ordered by the court to cure its September 14, 2017 violation at its next meeting:

"The Board shall immediately publish any draft minutes, transcripts, or recordings of the September 14th meeting on its website, or if it does not have a website, on the Department of Transportation's website. The Board also shall endeavor to publish such materials on the Indiana Department of Revenue's website, <https://www.ucr.in.gov/ucrHome.html>. Finally, at the Board meeting on October 26, 2017, the Board shall inform the public that such materials are publicly available and where they may be found," Judge Mehta ordered.

That upcoming meeting was originally scheduled by the Board, according to the Board's August 2017 meeting minutes, to be held on October 12, 2017. However, in an emailed sent by the Board to interested parties on October 5, 2017, UCR Board Chair Avelino A. Gutierrez stated:

"UCR Board Members and All Persons interested in the Unified Carrier Registration Plan-- The UCR Board Meeting originally set for next Thursday, October 12, will be postponed until Thursday, October 26, 2017 at 12:00 Noon EDT. The October 26 meeting will take place by teleconference and call-in information and a proposed agenda will be sent to you ahead of the meeting. Thank you."

A [notice](#) of the October 26, 2017 Board meeting appears in the October 17, 2017 edition of the Federal Register.

There is no record of a Federal Register notice for the originally planned October 12, 2017 meeting.

Judge Mehta also found that the Secretary cannot lawfully adjust the UCR fees --through her designee FMCSA-- after the 90 day window under the enabling statute expired:

"Whenever the Board proposes a change to the annual rates, the Secretary is statutorily required to provide notice and an opportunity for public comment and to act on the Board's recommendation within 90 days. Id. § 14504a(d)(7)."

The court has indicated that it wishes to receive a status report after the October 26th, 2017 board meeting. On

October 18th, 2017, Judge Mehta directed the parties to:

"...file a Joint Status Report on or before November 2, 2017, that sets forth the Parties' intentions with respect to continuing to litigate this matter. Additionally, the Report shall advise the court of: (1) whether UCR registration and fees collection began on November 1, 2017; (2) whether the Secretary of Transportation has acted on the Unified Carrier Registration Plan Board's fees recommendation; and (3) whether the Unified Carrier Registration Plan Board has complied with the terms of the court's Order of injunctive relief."

SBTC President James Lamb said this is part two of his non-profit [watchdog investigation](#) into UCR irregularities:

"Despite political push back from the U.S. Government, the SBTC is on the look-out for government fraud, waste, mismanagement, and abuse. It is the policy of the SBTC to expose unlawful government activities and improprieties." Lamb said.

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