



December 23, 2019

Via Elaine.Chao@dot.gov & US Mail

The Honorable Elaine Chao,
Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: PETITION TO THE UNIFIED CARRIER REGISTRATION (“UCR”) PLAN BOARD OF DIRECTORS FOR LAWFUL AMENDMENT TO THE UCR AGREEMENT FOR PERMANENT CHANGE IN ANNUAL UCR ENFORCEMENT DATE FROM JANUARY 1st TO APRIL 1st

Dear Secretary Chao:

By copy of this letter to the UCR Plan Board of Directors (“the Board”), we hereby request that the Board please amend the UCR Agreement (in accordance with the lawful procedures outlined therein) to change the annual UCR enforcement date from January 1st to April 1st

We write to you today because your Department is charged with the responsibility under the UCR Act (49 U.S. Code § 14504a.) of setting UCR fees and your Department’s delays for three years straight in processing the UCR Board’s proposals for fees have caused --and continue to cause --industry-wide chaos and confusion.

Indeed, for three consecutive years now, the annual UCR program has unreasonably commenced late due to Federal Motor Carrier Safety Administration (“FMCSA”) extended rulemaking conducted contrary to Federal law, which states you are required to set UCR fees for the upcoming year within 90 days of receiving the Board’s fee recommendations¹.

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¹ 49 U.S. Code § 14504a. (B) Setting fees.—The Secretary shall set the initial annual fees for the next agreement year and any subsequent adjustment of those fees— (i) within 90 days after receiving the board’s recommendation under subparagraph (A); and (ii) after notice and opportunity for public comment.

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Although the UCR Agreement required the Board to open the 2018 UCR renewal period on October 1st, 2017, FMCSA rulemaking effectively caused the program to open late in January of 2018. Similarly, the 2019 UCR renewal period opened in late December 2018. And while we have no idea when FMCSA will release the final fee rule that is currently pending for the 2020 UCR renewal period, many stakeholders expect this will happen in late December or early January again.

Although the Board purported to amend the UCR Agreement last year, our attorneys at the Bopp firm, copied here, advise us that the Board illegally amended the UCR Agreement because it failed to follow the process contained therein and that these amendments are unlawful and are subject to legal challenge, which we reserve the right to do. If that is indeed the case, then the current delay --in addition to the previous years' delays --is arbitrary and capricious and generally illegal.

Disturbingly, we note that carriers that have attempted to pay their UCR fees these past three years in good faith during the fourth quarter of each year in accordance with the schedule outlined in the UCR Agreement have been met with the states returning their fee payments at the direction of the UCR Board, frustrating their attempts to comply. We suggest this has happened because your Department has not set the fees in accordance with the 90-day time frame contained in the law, which was designed to prevent such confusion and chaos. We are copying the Inspector General here insofar as we have made repeated requests to his office for an audit of the UCR program; one that includes: (1) the unlawful collection of fees from carriers purely engaged in intrastate commerce; and (2) the unlawful imposition of credit card surcharges that are not authorized by either the UCR Act or promulgated by your Department.

Because FMCSA has failed to act on the Board's recommendations in accordance with law, your Department has effectively trained motor carriers as a matter of process to submit their UCR fees in the 1st Quarter of each year and they have now come to believe enforcement will not begin until at least April 1st. Last year, the enforcement date was even delayed until May 1st because we reported how --after your Department unlawfully released truckers' social security numbers to the Board (a self-described "Congressionally established unincorporated nonprofit association" ²) without truckers'

² <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4803:a0zzw1.3.1>

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Consent in violation of the Privacy Act—the Board thereafter recklessly published truckers' social security numbers on their website³. This is yet another matter we have asked Mr. Scovel to review as part of the OIG audit of FMCSA systems currently in progress and we echo that request here.

In the event that 2021 UCR actually opens on time next year, and there is a return to a January 1st deadline for the first time in four years, this will unfairly cause truckers and carriers to be blindsided and incur fines because they will have reasonably expected due to your Department's conditioning that the 2021 fee would not be due until April as was the case the previous three years; that is, we believe it is too late to return to a January 1st enforcement date now that FMCSA and the Board have engrained in carriers' minds April 1st as the compliance date.

We therefore ask the Board to please amend the UCR Agreement and recommend to the Commercial Vehicle Safety Alliance and the states that enforcement each year begin on April 1st to avoid unfair criminal prosecutions and assessments of fines and civil penalties against non-compliant motor carriers.

Lastly, and worthy of note... while the states need their money in the fourth quarter to fund motor carrier safety enforcement programs, it appears the FMCSA is insensitive to such financial needs as it willfully and knowingly thumbs its nose at the 90-day provision in the law.

In the past, U.S. Office of Governmental Accountability has been very concerned about the states not getting their safety funds on time stating:

“Some state officials told us that the delay in implementation has hindered their ability to acquire revenues, and thus regulate motor carriers and improve safety. Twentyfive of 28 states that responded to our survey indicated that a delay in implementing the unified carrier fee system hindered their ability to acquire revenues, and 22 states indicated that this was a great or very great hindrance. Since the Single State Registration System expired and no new system took its place, states that collected fees under Single State Registration System have not yet been able to collect these fees during 2007. If

³ <https://plan.ucr.gov/wp-content/uploads/2019/10/UCR-Data-Investigation-Press-Release.pdf>

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implementation of the unified carrier fee system is not completed by the end of 2007, FMCSA officials said it is unlikely that states could recoup fees not collected to date. In addition, 23 of 28 states reported that the delay hindered their ability to regulate motor carriers, and 13 states indicated that this was a great or very great hindrance. For example, Washington state officials reported that it had to scale back its transportation regulation, such as safety audits of commercial motor vehicles, drivers, and companies, by approximately 20 percent. Finally, 19 of 28 states reported that the delay hindered their ability to improve safety programs, and 9 states indicated that this was a great or very great hindrance. Moreover, further delay could jeopardize safety and enforcement programs in certain states. For example, Michigan reported that if replacement funding is not secured by July 1, 2007, its entire enforcement program, including the federal Motor Carrier Safety Assistance Program, will likely shutdown.”⁴

Once again, here we are—the industry and states alike—all hoping and waiting for the agency to act and this should not be the way government does business. We are disturbed that the agency rests on a legal theory that it does not lose the authority to act whenever it drags its feet on UCR fees and that it adopts a “we’ll-get-to-it-when-we-feel-like-it” theory of public administration.

So, while we would hope in the interest of public safety, the FMCSA will in the future endeavor to having all fee rulemakings completed on time and by October 1st— and we would request you to please ensure same internally, we ask that at least a grace period be set by the Board so that carriers are not caught off guard, especially new entrants who have never faced a January 1st compliance date.

We thank all parties for their consideration of this request.

Sincerely,

/s/ JAMES LAMB

Executive Director

cc via email: Mr. Bopp; Mr. Socci; Mr. Scovel; Mr. Minor; Mr. Fromm; Mr. Mullen;

Ms. Leaman; Mr. Leath, UCR Board

⁴ https://digital.library.unt.edu/ark:/67531/metadc301839/m2/1/high_res_d/94919.pdf