

United States Department of Transportation
Federal Motor Carrier Safety Administration

Docket No. FMCSA 2009-0231

RUB 2126—AB19

Comments of the American Bus Association

On the Notice of Proposed Rulemaking

Setting Fees for the Unified Carrier Registration Plan and Agreement

Docket No. FMCSA –2009-0231

September 28, 2009

The American Bus Association (ABA) appreciates this opportunity to comment on the Federal Motor Carrier Safety Administration 's (FMCSA or Agency) Notice of Proposed Rulemaking (NPRM) in the above entitled proceeding, published in the Federal Register of September 3, 2009, at pages 45583-97 as supplemented by Federal Register Notice at 74 Fed. Reg. 47911-12 published September 18, 2009.¹

The ABA is the premier trade association for the private over-the-road bus and motorcoach industry. The ABA has some 3800 member companies and organizations which includes approximately 850 bus and motorcoach operator companies. These bus operator members provide all manner of transportation services to the public, including fixed route scheduled service, charter and tour, airport shuttle and commuter services. In all the private bus industry provides transportation to some 750 million passengers annually.

The above entitled NPRM proposes to increase the level of fees imposed under the Unified Carrier Registration Agreement (UCRA) program by over 120 percent on a per-vehicle basis. The ABA opposes this increase for several reasons.

Congress replaced the former Single State Registration System (SSRS) with the Unified Carrier Registration program (UCR) in the legislation known as SAFETEA-LU (Pub. L. 109-53) in 2005. In so doing, Congress intended to expand the registrant pool of carriers to include commercial vehicle operators who had not previously been required to register under the SSRS program. The UCR program was to provide former SSRS States with the revenue that had been guaranteed under SSRS as well as providing revenue to States which had not previously been parties to the SSRS agreement. In return, Congress tasked the states with collecting the revenues for the UCR program through mandatory registration requirements and active enforcement against non-compliant

¹ In these comments, references simply to a page number are to this version of the NPRM.

carriers.² Moreover, it is clear that Congress expects the states to collect their necessary revenues from the full universe of covered entities through enforcement actions as necessary, and not from only those entities that comply with the UCRA³.

This brief recap of the history of the UCRA and its enforcement provisions brings ABA to the first reason for opposing this increase. In effect, the proposal would more than double the fees of those carriers who are compliant with the UCR in order to make up for the States failure to enforce the requirements of the UCRA program on the universe of carriers that should be in compliance with the program.

The ABA is in agreement with the comments filed in this docket by the American Trucking Associations, Inc. (ATA) when that organization comments: “On the whole, the participating states have not done a good job of enforcing the requirements of the UCRA program” (ATA Comments, page 7). As ATA then notes, “FMCSA...and NCSTS (National Conference of State Transportation Specialists) recognize this as a problem, but neither party recognizes how poorly the states have in fact done, nor how significant a factor this failure is in the revenue shortfalls the states have experienced” (ATA Comments, page 7).

How poorly the States have done may be found in the NCSTS comments filed in this docket. Currently, 307,767 of a possible 429,806 entities have registered for the 2009 registration year. In other words States have managed to not register approximately 30% of the total possible registrants, a significant shortfall in the program. And the proposed “cure” for this deficiency is to significantly raise the fees on carriers that are in compliance rather than step up enforcement activities against those carriers not in compliance.

It cannot be doubted that there has been a woeful lack of enforcement effort on the part of the States. Again, ABA must agree with the ATA when it notes that nearly half of the participating UCR jurisdictions have not “managed to register for purposes of the 2009 fees even three quarters of the carriers based in their borders” (ATA Comments, page 7). Without doubt there are many motor carriers who are operating without the required UCRA registration and who have not been obliged to by the States. It is, as

² Section 4305 (Section 14504a) states: (e) State Participation –

(1) State Plan – No state shall be eligible to participate in the unified carrier registration plan or to receive any revenues derived under the UCR agreement, unless the State submits to the Secretary, no later than 3 years after the date of enactment of the Unified Carriers Registration Act of 2005, a plan –

(A) identifying the State agency that has or will have the legal authority, resources and qualified personnel necessary to administer the agreement in accordance with the rules and regulations promulgated by the Board of directors;

³ (i) Enforcement –

(4) Enforcement by States – Nothing in this section –

(A) prohibits a participating State from issuing citations and imposing reasonable fines and penalties pursuant to the applicable laws and regulations of the State on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to –

(i) submit information documents as required under subsection (d)(2); or

(ii) pay the fees required under subsection (f).

ATA notes, “deeply unfair that the revenue these entities should be supplying must be made up by compliant carriers” (ATA Comments, page 7).

Given these facts it cannot be, as FMCSA states, that the proposal in the NPRM is a fair compromise to all parties. First of all the proposed increase in fees more than doubles the fess that compliant carriers must pay in the future. That fact alone renders this proposal unfair. But the proposal is also unjust because it levies these fees on compliant motor carriers while not addressing the crucial issue of forcing non compliant carriers to register as required⁴.

ABA contends that state revenue shortfalls in the UCR plan should be addressed to Congress not on the backs of compliant carriers. Congress should be petitioned to make up the revenue losses until such time as the states are able to achieve full compliance by all covered entities.

ABA also opposes this increase because, as noted above, it is unreasonable and because the Agency did not examine the reasonableness of the requested adjustment. FMCSA, in acting on the UCRA Board’s request, seems merely to have “rubber stamped” the proposal in the mistaken belief that it must approve any request. ABA contends that the Secretary of the Department of Transportation and the FMCSA are required to do more in approving any request. The Act limits a UCRA fee adjustment to a reasonable range (Paragraph (f) (11) (B) of the Act). The language of that clause therefore raises a duty on the part of the Secretary of Transportation to determine the reasonableness of a UCRA Board adjustment recommendation.

ABA agrees with the ATA that DOT’s duty to examine the Board request required it to consider the request in light of the particular circumstances in a given year. Among these circumstances that should have been examined were: the state of the national economy, the state of the motorcoach industry at this time of economic crisis and the failure of the States to enforce UCRA requirements. In sum, FMCSA was required to balance these factors besides the States’ need for money. There is no evidence that FMCSA met this requirement.

Third, ABA opposes this proposal because FMCSA’s determination that this is not a significant rulemaking is in error. The determination of a significant rulemaking that merits full administrative review is governed by Executive Order Number 12866, published in the Federal Register on October 4, 1993. Section (3) (f) of that Order defines the term “significant regulatory action” and provides four criteria, one of which is particularly relevant here⁵:

⁴ It must be noted that the UCRA’s Board recognized that its approach, that is, doubling the fees on compliant carriers benefited potential registrants who had been and continued to be noncompliant (Page 6, Regulatory Evaluation of the Fees for the Unified Carrier Registration Plan, August 7, 2009).

⁵ In its comments the ATA contends that this proposal implicates two of the criteria of section (3) (f). ABA agrees with the ATA concerning the UCRA Board’s proposal raising novel legal or policy issues, which itself requires a finding that this is a significant rulemaking .

“Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect of the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal government or communities...

The motorcoach industry is, as noted above, an industry that provides transportation to 750 million passengers each year. What is also true is that the industry is largely composed of small businessmen and women. The average ABA bus operator member has eight motorcoaches. It is a business in which a few thousand or a few hundred dollars is the difference between survival and bankruptcy. To layer a doubling of fees on top of all of the fees and taxes paid by motorcoach operators is to doom some to bankruptcy. But the problem goes deeper than just the effect on these small businessmen and women.

The private bus industry provides transportation services throughout the United States that allows people to go to work, to travel, for health care and for recreation. The lack of these services will adversely impact citizens in major ways and adversely impact the economy. Certainly, the inability to travel for work or to receive health care will negatively affect family, city and State budgets. But there are other costs. ABA’s research has determined that a motorcoach with fifty passengers can leave up to \$12,000 per night in a local economy. This is money that fuels jobs, supports taxes and services. ABA has determined that one bus company with ten motorcoaches operating in the southeastern United States oversaw passengers spending seven million dollars in one year. Multiply that \$ 7 million or even \$1 million by the 850 ABA members and the \$100 million threshold for a significant rulemaking is quickly passed.

Finally, transportation affects all sectors of the economy. It is not possible to conclude that this rulemaking is so limited in scope that it is not a significant rulemaking unless one may conclude that transportation is not a significant factor in the nation’s economy.

For all the above reasons ABA requests FMCSA to withdraw the NPRM. As written the proposal is unfair, unreasonable and without foundation in law and policy.

Respectfully submitted,

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