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I. Resolving Disputes

Under the Unified Carrier Registration Agreement

Overview

The Act

When it passed the Unified Carrier Registration Act, Congress recognized that disputes concerning the Act's implementation and operation would be bound to arise, and provided for the resolution of such disputes by the parties most closely concerned in them; that is, the states participating in the Unified Carrier Registration Plan and the motor carriers and other entities subject to the fees imposed by the Act. As set out in the provisions of the Act cited below, Congress determined that the dispute resolution function was to reside primarily in the UCR Board of Directors, rather than in the courts, which are not, on the whole, well-suited to dealing with these issues.

The Act requires the Board to:

Provide procedures for dispute resolution under the [UCR] agreement that provide due process for all involved parties. 49 U.S.Code 14504a(d)(2)(A)(iv)

In addition, the Act provides:

The board may contract with any person or any agency of a State to perform administrative functions required under the unified carrier registration agreement, but may not delegate its decision or policy-making responsibilities. U.S. Code 14504a(d)(6) [underscoring added]

and

The chairperson [of the Board] shall appoint ... a dispute resolution subcommittee 49 U.S.Code 14504a(d)(5)(B)

Responsibility of the Board

In view of these provisions of the Act, the Chairman of the Board has appointed a UCR Dispute Resolution Subcommittee. However, the Board has also determined that it must itself retain the authority to directly resolve disputes arising under the UCR.

Duties of the Subcommittee

The Board has directed the Subcommittee to draft procedures to govern the process of resolving disputes arising under the Plan. This Manual comprises those dispute resolution procedures.

The Board has also directed the Subcommittee to review issues submitted to the Board for the Board's resolution, to ensure that when the Board hears a dispute it will have all the necessary facts before it, and that the parties involved in the dispute have attempted to resolve it on their own.

II. Definitions

In this Manual, the following terms, when capitalized, have the following meanings:

Act means the Unified Carrier Registration Act, title 49 United State Code, section 14504a.

Agreement means the UCR agreement established by the Act.

Board means the Board of Directors of the Unified Carrier Registration Plan established by the Act.

Chairman means the chairman of the Board, or the Board member designated by the Chairman to preside over the resolution of a dispute by the Board.

Registrant means an entity required to register under the UCR. Registrant includes an entity that disputes that it is required to register.

State means a state participating in UCR.

Subcommittee means the UCR dispute resolution subcommittee provided for by the Act.

UCR stands for Unified Carrier Registration, and refers variously to the UCR Agreement and the UCR Plan established by the Act.

III. Submitting Disputes for Resolution

Submitting a Dispute

A State or a Registrant may submit for resolution by the Board a dispute arising under the Act, as implemented in the Agreement.

Any such dispute shall be submitted to the Chairman, who shall promptly refer the dispute to the members of the Subcommittee for review.

Before a State or Registrant submits a dispute for resolution by the Board, the parties to the issue shall have made good faith attempts to resolve their dispute.

The Board encourages parties to a dispute to make their submissions electronically.

Required Information

The following information is required before a dispute can be resolved by the Board.

The identity of the States or other parties involved in the dispute.

The name and affiliation of the person submitting the dispute, with mailing address, telephone number, and e-mail address.

The specific dispute, question, or issue of compliance to be resolved.

Relevant provisions of the Act or the Agreement.

Evidence of prior efforts by the parties to resolve the dispute.

A statement of the relief, resolution, or interpretation sought.

A formal request that the Board hear and resolve the dispute.

It is the responsibility of the submitting party to ensure a complete submission.

Recommended Information

In addition to the required information, it is suggested that the following items be included in the submission of a dispute:

An explanation of the issues involved in the dispute.

A statement of any change in reporting, record keeping, or other paperwork that would be required by the resolution, interpretation, or relief sought, together with any identified costs or benefits.

The categories of persons, businesses, organizations, and States affected by the dispute and the relief sought.

Language embodying the proposed resolution of the dispute, if applicable.

Documents supporting the claims made or the relief requested. Such documentation should be edited to protect the confidentiality of private entities which are not involved in the dispute.

A Dispute Submission Form is provided in an appendix to this Manual. Although parties submitting a dispute are not required to use this form, it does incorporate all of the elements required for a complete submission to the Board.

Subcommittee Review

Within 30 days after a dispute is referred to the Subcommittee by the Chairman, the Subcommittee shall review the dispute according to the procedures set out below, and shall inform the Chairman whether the Board may hear the dispute.

If the submission under review lacks one or more of the required elements of information, the dispute cannot be considered by the Board. When this is the case, the Subcommittee shall return the submission to the party submitting it, with a statement of the reason, and may assist the party to supply the required elements.

When appropriate, the Subcommittee may work with the parties to a dispute to assist them in resolving the matter. In such an instance, the Subcommittee must take care not to usurp the Board's prerogative to decide matters of UCR policy.

Withdrawing a Dispute

A dispute may be withdrawn by the party that submitted it at any time prior to formal action on it by the Board.

IV. Preliminary Matters

Parties to a Dispute

For purposes of these procedures:

The entity submitting the dispute to the Subcommittee,

The entity or entities named by the submitting entity as representing the other side of the dispute, and

A State alleged by the submission to be out of compliance with the Agreement

shall be considered parties to the dispute. In addition, any other entity which may be affected by the Board's resolution of the dispute may apply to the Chairman to be designated a party to it.

Representation of the Parties

A party to a dispute may choose to be represented by legal counsel, by an officer or employee, or by another person to whom it has granted a power of attorney covering such representation. Parties should consider that the resolution of a dispute may turn primarily upon the Board's understanding of the details of particular transactions or circumstances affecting the parties; legal expertise may be of secondary value.

Scheduling Hearings

When the Subcommittee has determined that the submission of a dispute contains all the required elements of information, and has returned it to the Chairman, the Chairman shall within ten days circulate the submission electronically to the other members of the Board, and shall schedule a hearing of the dispute by the Board at the next-occurring in-person meeting of the Board that is more than 60 days after the Chairman circulated the submission to the Board.

With the agreement of the parties to a dispute, the Chairman may schedule the hearing of the dispute for a meeting of the Board by telephone; provided, however, that by majority vote the Board may, either before or after the dispute has been heard telephonically, require that the dispute may be heard or reheard, as the case may be, at an in-person Board meeting.

If time does not permit a dispute to be fully heard at the Board meeting at which it is scheduled, the Chairman shall schedule the remainder of the hearing for a reasonably early time convenient for the parties and the Board. A hearing continued in this fashion may be conducted by telephone.

Notification of the Parties

When the Chairman schedules the hearing of a dispute, he or she shall also circulate electronically to the parties to the dispute the date of the hearing, the dispute submission, and

notification that they may each file with the Chairman relevant supplementary materials pertaining to the dispute.

Public Notice

When a dispute has been scheduled for hearing before the Board, the Chairman shall request the Federal Motor Carrier Safety Administration to have inserted in the notice of the Board meeting regularly published in the *Federal Register* a note that the Board will conduct a dispute hearing as a part of that meeting.

Supplementary Submissions

The party that submitted the dispute, other parties to the dispute, and members of the public may file relevant supplementary materials with the Chairman prior to the hearing of the dispute, provided that:

Materials should be received by the Chairman at least 20 days in advance of the date of the hearing,

Any materials so filed shall be promptly circulated electronically to the other members of the Board by the Chairman, who may also provide them to the parties to the dispute, and

The Board shall have discretion not to consider materials received by the Chairman less than 20 days prior to the hearing.

V. Hearing Disputes

Conflicts of Interest

When a Board member has a potential or actual conflict of interest with respect to a dispute that may bring into question the objectivity and fairness of the Board's resolution of the dispute, the member may recuse him or herself from the hearing and decision of the dispute, and must in any event disclose the actual or potential conflict to the other members of the Board. This provision is aimed primarily at personal conflicts of interest; Board members may of course ordinarily represent the interests of their State or industry without incurring a conflict.

Hearing Procedures

The Chairman shall preside at the hearing of a dispute before the Board.

The hearing of a dispute by the Board shall be conducted in a manner less formal than that required during judicial proceedings. The rules of evidence used in judicial proceedings are not required at hearings before the Board.

A party may tape or otherwise record the proceedings of a hearing before the Board, by court reporter or otherwise, but the party shall assume all costs of the taping and recording, and must within 30 days following the hearing provide the Chairman with two certified copies of a transcription of the hearing, prepared at the party's own cost.

All parties to a dispute as well as members of the public shall have the opportunity to be heard at the hearing of a dispute before the Board.

All portions of a hearing of a dispute by the Board shall be open to the public.

Course of a Hearing

The parties to a dispute, as well as the public, should recognize that the Board is composed of members of the UCR community that are experts in various aspects of the Agreement and its administration. Members of the Board are not necessarily engaged in the practice of law nor are Board members expected always to have a legal background.

When a dispute is brought before the Board, the parties can generally expect the following course of events; however, depending upon circumstances, the Chairman has the discretion to alter it.

The Chairman invites the parties to the dispute to come before the Board (if the hearing is in person).

The party that submitted the issue is given the opportunity to present the issue, followed by questions from the Board.

Other parties to the dispute are provided the opportunity to cross-examine.

The other party or parties then present their position, followed by questions from members of the Board.

The party that submitted the dispute may cross-examine the other parties, and will be given an opportunity to respond to their presentations.

Following the presentations of the parties, the Chairman will open the hearing for comments and questions from members of the public.

The Board will then deliberate on the issues. If more than one dispute is to be heard by the Board at the same meeting, the Board may choose to hear all the disputes first, before it deliberates on any of them.

A decision of the Board on a dispute shall be put in the form of a motion, which shall be voted on by the members of the Board present and participating. The decision shall be adopted upon a majority vote of such members, and recorded in the minutes of the meeting.

VI. Board Decisions

Criteria for Decisions

When deciding an issue before it, the Board must generally consider:

The consistency of a proposed decision with the provisions and the intent of the UCR Act and Agreement;

Any positive or adverse effects of the decision on States and Registrants;

The desirability of making an Agreement interpretation as opposed to recommending an Agreement amendment; and

Both the public and private costs of any proposed action; including administrative costs.

Board Discretion

The Board's discretion in deciding a dispute and providing relief to the parties is very wide and involves consideration of the expectations of the parties as well as the expectations of the entire UCR community with respect to the dispute process.

The Board should try to resolve a dispute brought before it. Specifically, it should answer the questions the parties have asked, directly or indirectly, and give an answer in such a manner that it provides guidance or relief to the parties, as well as to others who may find themselves similarly situated.

The degree of difficulty or the relative importance of a dispute should not of itself determine whether or not the Board decides it. An important or difficult issue is just the kind that the Board is called on to decide, rather than have the matter taken to court and thus out of the hands of the UCR community.

Timing of Decisions

The general expectation of the UCR community is that the Board will render its decision in a dispute at the same meeting of the Board at which the dispute is heard, or at the meeting immediately following. When the Board cannot make a decision on a dispute at the same meeting, the Board will outline at that meeting the process and timetable it will employ in coming to a decision on it.

The Board may in extraordinary circumstances set an alternative process for determination, as, for example, in a dispute that contains so many fact-specific matters that they threaten to overwhelm the normal dispute process. Such an alternative process might include, among other options, the appointment by the Board of a person to take all testimony and to summarize it for the Board's review and action.

Matters in Administrative Proceedings or in Court

The Board is encouraged to decide disputes that come before it; however, where a dispute is the subject of an ongoing administrative or judicial proceeding, the Board should consider postponing any decision on it until the proceeding has run its course.

In such an instance, the Board must weigh various factors in determining whether to rule on the dispute as submitted to it, rule that the issue be first resolved in the external proceedings, or decide not to rule. Those factors may include:

The need to maintain the stability and consistency of the Agreement;

The uniformity of the Board's administration and interpretation of the Agreement;

The need for the administrative apparatus of a State to function without interference;

The desirability of keeping UCR matters out of the courts; and

The need for the Board to restrict itself to issues that are appropriate to its expertise.

States are encouraged to take their disputes before the Board rather than to the courts or external administrative proceedings. Disputes between States and Registrants coming before a court can involve serious threats to the uniformity of the Agreement's administration.

Nothing in these procedures shall preclude a State from seeking judicial relief after exhausting its remedies under the Agreement.

VII. Following the Decision of a Dispute

Date and Effect of Decisions

The date of a decision of a dispute that has been heard by the Board is the date the Board adopts the motion which incorporates the Board's decision. The date of decision will also be the effective date of the decision, unless the Board specifies otherwise.

Within 30 days, the Chairman shall notify in writing the parties to a dispute of the decision.

Records of Decisions

In order that dispute resolution decisions of the Board may be used effectively as precedents, the Subcommittee shall, within 90 days following the decision of a dispute, prepare a summary of the issues involved and set out the Board's rationale for making the decision. This shall be recorded as an exhibit to the minutes of the Board meeting at which the dispute was decided.

Dispute Resolution Submission Form

Submission Date:								
Party Submitting the issue:								
PRINCIPAL POINT OF CONTACT								
Name:								
Organization:								
Address:								
City:				State:			Zip:	
Telephone:			Fax:			Email:		
UCR AGREEMENT ISSUE OF DISPUTE								
Relevant UCR Agreement References: <i>(Additional documentation may be provided).</i>								
1. Outline the question or issue of compliance to be resolved:								
2. Provide an explanation of the issue:								
3. Provide an outline of actions taken by the parties to resolve the issue:								

4. Provide a statement of any changes in reporting, record keeping, or other paperwork that would be required by the resolution, interpretation or relief sought, together with identified costs or benefits.	
5. Provide a statement of the proposed solution of the issue or other relief sought.	
6. Identify the persons, businesses, organizations, and States that are affected by the issue and the relief sought.	
<p><i>Please attach documents that support the claims made or the relief requested. The submitted documents will be made available to all parties to an issue. It is the responsibility of the submitting party to edit the documents so as to preserve the confidentiality of information of any non-parties to the issue.</i></p>	
<p>With the submission of this form, I/we formally request that the Unified Carrier Registration Board hear and resolve this issue.</p>	
Name (printed):	
Name (signed):	