

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion, )  
to consider how enactment of the Unified Carrier )  
Registration Act of 2005 has affected the )  
Commission’s authority to regulate motor carriers )  
pursuant to the Michigan Motor Carrier Act. )  
\_\_\_\_\_ )

Case No. T-1848

At the October 24, 2006 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman  
Hon. Laura Chappelle, Commissioner  
Hon. Monica Martinez, Commissioner

**ORDER AND NOTICE OF OPPORTUNITY TO COMMENT**

On August 10, 2005, Public Law 109-59, known as the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” or “SAFETEA-LU” was enacted by Congress. Of special concern to the Commission are the provisions of Subtitle C of the SAFETEA-LU that repeal the existing Single State Registration System (SSRS) and establish a new Unified Carrier Registration (UCR) system. Other provisions of Subtitle C may have a dramatic effect on the Commission’s ability to collect registration and credential fees from both intrastate and interstate regulated carriers pursuant to the Michigan Motor Carrier Act, 1933 PA 254 (Act 254), as amended, MCL 475.1 *et seq.*, and its motor carrier regulations, R 460.18101 – R 460.19301. Because the deadline for the re-registration of existing carriers for 2007 is imminent and because key aspects of the new regulatory landscape are either undetermined, unpublicized, or clouded

with uncertainty, the Commission opens this docket to shed light on the pending changes. In addition, the Commission has determined that it would be beneficial to invite interested persons to share their opinions regarding the effect that enactment of SAFETEA-LU and implementation of the new UCR system will have on motor carrier regulation in this state.

### Background and the Prior Regulatory Scheme

In general, the responsibility for regulation of motor carrier operations has been divided between the federal government and the states. Because the Commerce Clause of the United States Constitution (Article 1, Section 8, Clause 3) authorizes Congress to regulate commerce “among the several states,” Congress has the ability to enact exclusive legislation to regulate interstate motor carrier operations or to preclude a state from enacting an intrastate motor carrier regulation that unreasonably burdens interstate commerce.

#### 1. State of Michigan Regulation

In Michigan, grants and reviews of intrastate authority are the responsibility of the Commission pursuant to Act 254. Applications, accompanied by the \$100 application fee, may be submitted for general commodities authority as a common carrier and for household goods authority as a common or contract carrier. Upon review and approval by the Commission, a carrier is required to submit proof of required insurance, in amounts comparable to federal requirements for interstate carriers, and to register a minimum of one vehicle for operation of the authority.

The registration fee for a vehicle for use in transporting general commodities is \$100 per vehicle until July 1 of each year when the fee is reduced to \$50 per vehicle. Where the carrier will

be dedicating the vehicle to the transport of household goods, the vehicle registration fee is \$50 per vehicle, with no half-year fee reduction.

Presently, approximately 1,400 carriers with active general commodity intrastate authority have registered 6,400 vehicles. An additional 170 carriers with active household goods intrastate authority have registered 1,740 vehicles.

Once an authority has been made active, the carrier may elect to place the authority in temporary discontinuance. Situations of seasonal use, such as asphalt, processed grains, and packaged nursery stock, often result in the authority being active for only a portion of the year. Additionally, a carrier may, to allow for business reorganization, due to illness, or pending litigation, etc., place an authority in extended temporary discontinuance. During the period of discontinuance, the carrier is not required to register vehicles.

Each year, to retain intrastate operating authority, carriers are required to file an annual renewal by December 31 of the preceding year. A \$50 authority renewal fee is charged for each active or temporarily discontinued intrastate authority. If the application is filed between December 1 and December 31, a \$50 late fee is also charged.

During the operational year, the carrier may also request various modifications of the operating authority, ranging from transfer to another carrier, name change, or discontinuance to reinstatement. Vehicle registrations may also be modified through retirement, transfer, correction, and replacement. Fees associated with these transactions range from \$0 to \$100 per action.

## 2. Single State Registration System

The SSRS was adopted by Congress to ease the burden on interstate commerce caused by the registration requirements imposed on interstate carriers by states in which those carriers were operating. Michigan is one of 38 states that elected to participate in the SSRS, which was enacted

by Congress as 49 USC 14504. Each participating state served as a “base state” for registration of carriers authorized to perform for-hire interstate operations. Michigan was the base state for carriers whose primary business location was within Michigan. In addition, a carrier from a non-participation state or Canada could select Michigan as its base state. A carrier would register with the base state the number of vehicles it intended to operate within each of the SSRS participating states during the registration year (January 1 through December 31 of a given year). Each state had established a registration fee of \$0-\$10 per vehicle. Fees were computed as the product of the number of vehicles per state multiplied by the individual fee per vehicle, with the total of all state fees being collected from the carrier. Once per month, each participating SSRS state compiled a listing of carriers and vehicle numbers registered for each participating state. The individual state listing was forwarded to the state with payment (transfer) of the month’s collections included in the listing. Michigan in turn received monthly listings and registration payments from each of the participating members. In Michigan, the SSRS involved the processing of up to 6,000 interstate carriers and generated approximately \$2.6 million dollars per year.

### 3. Interstate Operations

The Federal Motor Carrier Safety Administration (FMCSA) is responsible for reviewing applications and granting authority to conduct regulated interstate for-hire motor carrier operations. Grants may be made for common and contract authority to transport general commodities, passengers, and household goods. Carriers are required to maintain proof of insurance in prescribed amounts and a listing of service agents on file with FMCSA. Authority may be suspended, revoked, or placed out-of-service for failure to maintain required submissions or after finding a carrier unfit. Carriers conducting interstate operations are required to register each employed vehicle pursuant to the requirements of the International Registration Plan (IRP), MCL 257.801g.

This program establishes a base state and provides one state through which the carrier completes mileage reports and payments for distribution to other member states (similar in concept to the SSRS). At registration, an IRP license plate is issued for the vehicle by the base state. Act 254 requires that IRP vehicles registered through Michigan and operating solely in for-hire interstate movements also be registered with the Commission. Vehicles utilized in regulated for-hire operations are required to obtain Commission decals (\$100 per decal). Approximately 1,330 carriers meeting these conditions have registered over 5,900 vehicles for 2006. Various vehicle registration transactions, such as replacement, transfer, and correction, may also be completed for these vehicles during the year, generating \$3 to \$100 per action.

Where the vehicle is IRP registered in another state and operates in Michigan in regulated interstate for-hire movements, registration and fee payment would be made through the SSRS. If the carrier will be conducting interstate for-hire operations defined as exempt from federal regulation, vehicles and related fees of \$0-\$10 per vehicle would be processed under the exempt program and the carrier issued a Michigan Identification Number (MIN). During 2006, approximately 300 carriers have registered 950 vehicles at \$10 per vehicle, and approximately 300 carriers have registered 1,400 vehicles with no fee collected per vehicle.

#### 4. Combined Intrastate and Interstate Operations

Many carriers possessing intrastate general commodity authority have also obtained interstate operating authority. Approximately 2,100 carriers with 44,800 vehicles are included in this category. Placement in this category requires that the carrier comply with the requirements and transactions set forth above for both groups. In relation to vehicle registrations, involving decal issuance, the carrier is required to complete only one registration and fee payment to cover both intrastate and interstate operations.

## The New Public Law 109-59 Regulatory Scheme

In order to obtain an overview of the known carriers and related vehicle registrations that will be affected, the Commission's current records must be reviewed and compared to records of the FMCSA to identify those carriers presently registered as having interstate for-hire authority. The results of such review are not conclusive. Intrastate carriers who currently have no interstate authority have the option of seeking interstate authority. Additionally, there is some uncertainty when the new regulatory scheme will become effective.

Currently, the UCR system is scheduled to replace the SSRS as of January 1, 2007, although pending legislation in Congress could postpone the demise of the SSRS until December 31, 2007. Notices of the termination of the SSRS and of the pending legislation have been published in the *Biweekly Bulletin*, commencing on October 2, 2006, and posted on the Commission's website. It has been estimated that the termination of SSRS, conducted in Michigan pursuant to MCL 478.7(4), will result in an annual loss of revenue of approximately \$2.6 million. Because MCL 478.7(5) requires that not less than 90% of these fees in excess of \$1.4 million be deposited in the truck safety fund, if these funds are not replaced, \$1.52 million of the Commission's operating funds and \$1.08 million of truck safety funds would be at risk.

Additionally, because 49 USC 14504a(c) describes the registration of an interstate carrier's operations within a state as an unreasonable burden on interstate commerce, several provisions of Act 254 are likely to be ineffective after January 1, 2007. These provisions include:

- MCL 478.7(1) and (2) and R 460.18212(1), which require the registration of interstate authority. No revenue is generated from these provisions.
- MCL 478.7(3) and R 460.18212(2), which require the registration of operations that are exempt (i.e., grains, raw fruit, etc.) from interstate regulation. A \$25 fee for submission of the original registration is charged, but generates minimal (estimated less than \$300 per year) revenue.

- MCL 478.7(4) establishes a \$10 fee for each vehicle operated in Michigan in regulated interstate commerce that is IRP plated in another state. This statute has been the basis for fees charged within SSRS. Additionally, MCL 478.7(4) provides the basis for vehicle registration fees of interstate exempt operations. At present, approximately 310 carriers have registered 950 vehicles at the \$10 per vehicle fee and 323 carriers have registered 1,415 vehicles that are not subject to the \$10 fee based on reciprocal agreements.
- MCL 478.2(2) requires registration of vehicles that are IRP plated in Michigan and used entirely in interstate operations. Annual registrations are \$100 per year per vehicle before July 1 and are then reduced to \$50 per half-year per vehicle. There are approximately 6,000 vehicles registered in compliance with this provision.

The UCR does not preempt MCL 476.1 and 477.1 relative to initial grants of intrastate operating authority.

The new federal act also exempts from state regulation any interstate motor carrier or private motor carrier that also performs regulated intrastate operations. There are currently 2,078 carriers (excluding household goods carriers) with 44,781 vehicles that have both intrastate and for-hire interstate authority. The exemption would remove these carriers from the current following obligations of:

- The submission pursuant to MCL 478.1 of a \$50 fee to renew their intrastate operating authority;
- Fees for annual registration of vehicles (\$100), half-year vehicle registration (\$50), the transfer of registration (\$10), and the purchase of the 72-hour special identification for \$10 each for use in emergency situations as required by MCL 478.2(1), MCL 478.2(3), and R 460.18412(2).
- Completion of an annual renewal process and payment of a late fee of \$50 for submission of the renewal after December 1 and by December 31 of the year preceding the year being renewed as required by MCL 479.10(1).
- Payment of \$3.00 to replace a lost or destroyed decal as required by R 460.18501(3).
- Payment of \$3.00 for replacement of a lost or destroyed cab card as required by R 460.18502(2).

- The submission of proof of insurance and the requirements of lease agreement submissions covered by MCL 479.10a and R 460.18406.

The Commission will have continuing authority over exclusively intrastate carriers. Carriers operating exclusively in intrastate movements are exempt from the UCR provisions under 49 CFR 13905(b)(2) and 13908(e). The exemption from preemption has also been continued for household goods transportation under 49 CFR 14501(c)(2)(B). Currently, approximately 170 carriers operate 1,740 vehicles within this category.

There are questions over other areas of certain carriers' operations. For example, while the federal scheme indicates that there will be continuing authority over the intrastate transportation of waste or recyclable materials by any carrier, it is unknown if there are any intrastate carrier operations regulated by the Commission that would be involved because:

- MCL 479.2(p) establishes exemptions for the transport of defined recyclable materials; and
- Intrastate authorities are not commodity specific and provide no way to identify carriers meeting this criteria.

The transition to the UCR registration program results in the immediate question of how states will be made whole in relation to fees previously collected under the SSRS and Commission regulation of the affected group. The UCR act requires the establishment of an administrative board, a registration fee schedule, and procedures governing registration, fee collection, fee distribution, and state utilization of collected fees. States that previously participated in the SSRS program will be eligible to participate in the UCR program. Under 49 USC 14504(g)(1), Michigan will be entitled to receive UCR fees equal to the SSRS fees it collected in 2004. Further, because Michigan previously collected fees from entities having both intrastate and interstate authority, which fees are now eliminated under the undue burden clause, 49 USC 14504(g)(2) authorizes

payment to the state of additional UCR fees to replace the intrastate fees collected from these carriers in 2004.

It is anticipated that the Commission will continue to be involved in the registration activities. Registration for the UCR will be conducted on an annual basis through the applicant's (motor carrier, freight forwarder, leasing company) base state. The base state is defined as a state that is a member of the UCR agreement and in which the applicant maintains its principal place of business. Where the applicant does not have a principal place of business in the United States, or where the principal place of business is located in a state that is not a member of the UCR agreement, the applicant may select a qualified base state for registration. There will be no supplemental filings during the year. If the carrier adds or removes vehicles from its fleet, it will make the change on the next annual renewal.

The Commission Staff is already studying the effects of the federal legislation on the state's regulatory scheme. As part of this process, the Commission welcomes comments from any interested party on or before December 1, 2006 regarding the effect that the new federal law and implementation of the UCR system will have on motor carrier regulation in this state. The Commission intends to issue a more definitive statement before the end of 2006.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1933 PA 254, as amended, MCL 475.1 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. A proceeding should be commenced to consider how enactment of the Unified Carrier Registration Act of 2005 has affected the Commission's authority to regulate motor carriers pursuant to the Michigan Motor Carrier Act.

c. Interested persons should be invited to file comments no later than December 1, 2006 regarding the effect that the new federal law and implementation of the new Unified Carrier Registration system will have on motor carrier regulation in this state.

THEREFORE, IT IS ORDERED that:

A. This proceeding shall be commenced to consider how enactment of the Unified Carrier Registration Act of 2005 has affected the Commission's authority to regulate motor carriers pursuant to the Michigan Motor Carrier Act.

B. Interested persons shall file comments by December 1, 2006 regarding the effect that the new federal law and implementation of the new Unified Carrier Registration system will have on motor carrier regulation in this state.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark  
Chairman

( S E A L )

/s/ Laura Chappelle  
Commissioner

/s/ Monica Martinez  
Commissioner

By its action of October 24, 2006.

/s/ Mary Jo Kunkle  
Its Executive Secretary

c. Interested persons should be invited to file comments no later than December 1, 2006 regarding the effect that the new federal law and implementation of the new Unified Carrier Registration system will have on motor carrier regulation in this state.

THEREFORE, IT IS ORDERED that:

A. This proceeding shall be commenced to consider how enactment of the Unified Carrier Registration Act of 2005 has affected the Commission's authority to regulate motor carriers pursuant to the Michigan Motor Carrier Act.

B. Interested persons shall file comments by December 1, 2006 regarding the effect that the new federal law and implementation of the new Unified Carrier Registration system will have on motor carrier regulation in this state.

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of October 24, 2006.

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Its Executive Secretary