

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF THE
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.
ON AVELINO GUTIERREZ'S RESPONSES TO THE FMCSA'S
REQUEST FOR ADDITIONAL INFORMATION
DATED JUNE 14, 2022**

**IN RESPONSE TO FMCSA'S
REOPENING OF THE COMMENT PERIOD ON 2023
FEES FOR THE UNIFIED CARRIER REGISTRATION
PLAN AND AGREEMENT**

Docket No. FMCSA-2022-0001

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I. Introduction.

A. The responses to FMCSA’s requests are those of Mr. Gutierrez, the UCR Plan’s Executive Director, not those of the UCR Plan Board of Directors.

On March 22, 2022, FMCSA sought additional information related to OOIDA’s comments to the rulemaking to set the 2023 UCR fee. The email requesting the additional information was sent to Mr. Avelino Gutierrez, the Plan’s Executive Director. Mr. Gutierrez did not share the email or the requests for information with the UCR Board as a whole. (OOIDA is unaware if Mr. Gutierrez shared the requests with individual Board members.) Moreover, FMCSA’s request was not made public until it was docketed at the same time as Mr. Gutierrez’s response. The lack of transparency in FMCSA’s communication with Mr. Gutierrez and his efforts in responding to FMCSA without the input of the entire Board reflect upon the UCR Board’s tenuous control of the UCR Plan and its relationship with its contractors.

The appearance of secrecy and the limitation on Board involvement demonstrate the limits of the UCR Board’s monitoring and oversight of the UCR Plan’s contractors. FMCSA’s bypassing of the UCR Board, and its sending of its request directly to the UCR’s contracted Executive Director, is evidence that the agency is cognizant of this state of affairs. That this Board bypass occurred with regard to significant questions surrounding the lawfulness of the UCR’s activities is of great concern.

The UCR Plan is an official governmental entity, with a “.gov” internet domain.¹ And yet, the UCR Plan has no staff or employees, only the Board and its contractors. The Board is made up of volunteers who all have full time jobs elsewhere. Currently, there are nine Board members who represent states who are the beneficiaries of the UCR fee, five who represent the

¹ “Federal government websites always use a .gov or mil domain.” See <https://oig.hhs.gov/notices/official-site.asp>.

industry members who pay the UCR fee, and one member who, by statute, is the Deputy Administrator of FMCSA.

By necessity, contractors administer the UCR Plan, including devising strategy and policies for the Board's approval. The volunteer Board members do not have sufficient time to provide detailed oversight of the contractors' actions or proposals. During the last several years, given that the states have received full entitlement payments, the state representatives who make up a majority of the Board have had little reason to question the contractors' activities and recommendations or to sympathize with industry members' concerns.

Other than the individual Board members themselves, there are no internal checks and balances to inhibit improper conduct by the Board or its contractors. Rather, the UCR Board's fee proposal, the notice and comment period, and the Secretary's approval of that proposal, collectively present the only opportunity for the public or any related governmental entity to provide public oversight of the UCR Plan. As Mr. Gutierrez stated on page 27 of his comments, "There is no specific channel for the Board to receive suggestions or proposals externally from someone in the regulated industry, the participating states, or law enforcement, or from a member of the public." Thus, OOIDA is using the only remaining forum to address its concerns about the actions of the UCR Board and its contractors. The fee-setting rulemaking provides the most significant authority of the Secretary to provide important oversight to ensure that the amount of the UCR fees reflect actions by the UCR that conform with the law.

B. Mr. Gutierrez did not address OOIDA's legal analysis.

Mr. Gutierrez's responses to FMCSA confirm the factual basis for the issues raised by OOIDA in its first comments filed in February. The UCR Plan has been stockpiling excess funds into financial reserves rather than disclosing to the Secretary the full amount of the excess

funds that the Secretary is required to use to lower the next year's fees. The UCR Plan has also not previously proposed, and does not propose now, to apply excess funds collected in one year to lower fees in the next fee year. Furthermore, Mr. Gutierrez explains that the scheduling policies they have established to administer the UCR Plan do not allow them to do so. But he does not explain how either of these actions by the UCR Plan could possibly be lawful under the UCR statute. The Secretary must now use his authority to approve fees only if they comply with the UCR statute.

C. The Secretary of Transportation's UCR fee approval power is the government's only primary oversight authority over the UCR Plan.

The UCR statute provides one administrative check—and one only—on the UCR Board's actions to collect and annually distribute millions of dollars in fees paid by the nation's trucking companies, namely the Secretary of Transportation's authority and responsibility to set UCR fees. The statute defines and governs the scope of the UCR Plan's authority and provides constraints on the setting of UCR fees amounts. The Secretary must consider whether the actions of those who administer the UCR Plan have adhered to those constraints, or whether, as OOIDA argues, the proposed UCR fees are higher than permitted by law. In making this determination, the Secretary must review the UCR's administrative spending, its procedures for administering the fees, and its timely use of excess fee revenue to reduce the next year's UCR fee amounts. Without the Secretary's oversight, the administration of the UCR Plan is left entirely to its contractors.

D. A note on timeliness.

In its notice to reopen this regulatory docket, FMCSA explains that this additional comment period is 14 days because of the need to set the fee soon. The only deadline within which the Secretary must act upon the UCR Board's recommendation is within 90 days of its

receipt and after notice and opportunity for public comments. *See* 49 U.S.C. § 14504a(d)(7). The UCR Plan's recommendation was transmitted to the Secretary in a letter dated August 26, 2021. It was not put out for public comment until January 24, 2021, well beyond the 90 days required for the fees' approval under the statute. OOIDA responded promptly to that notice with its comments. Regardless of the basis for the agency's newfound sense of urgency, ensuring that the fee amounts comply with the statute must take precedence.

Nothing in the UCR statute requires the UCR to impose next year's fees under its current procedures and schedule, and thus its timeline can be adjusted to accommodate the work it will take to bring the administration of the UCR, including its fees, into compliance. OOIDA hereby submits that its members will not be prejudiced by a delay in the date that next year's fees would be due.

II. OOIDA's Comments to Mr. Gutierrez's May 9, 2022, Submission.

A. Mr. Gutierrez did not address OOIDA's legal concerns.

OOIDA's comments, submitted February 23, 2022, demonstrated that the UCR Plan's proposed fees for 2023 are not in accordance with law because the proposal does not apply all excess fee revenue to reduce fees for the subsequent year as required under 49 U.S.C. § 14504a(h)(4). OOIDA's comments described how the UCR Plan is setting aside significant excess revenue into reserves rather than using it to reduce next year's UCR fees and described how the UCR did not propose to use excess revenue from one year to reduce the UCR fees in the next fee year. Mr. Gutierrez's comments confirm OOIDA's description of these UCR Plan actions in significant detail and with additional documentary evidence.

Mr. Gutierrez explains that the reason that the UCR is not applying all excess funds to lower next year's fees is because the UCR Plan has chosen to put some of those funds into

investment accounts and, therefore, those funds are “unavailable.” Mr. Gutierrez also states that excess funds from one year cannot be applied to lower next year’s fees because of the schedule the UCR Plan has chosen for their collection and accounting. What Mr. Gutierrez failed to do is explain how these actions comply with the law. Mr. Gutierrez provides no legal authority that would make these procedures lawful, and OOIDA knows of none. If adherence to the Plan’s own procedures causes the Plan to violate the statute, the procedures must give way.

B. The UCR Plan’s reserves policy violates the UCR statute.

Upon recommendation of the UCR contractors, the UCR Board decided to hold some excess funds in reserve accounts—essentially rainy-day funds—that the statute does not contemplate or authorize. Mr. Gutierrez explains that the UCR Plan Board’s own policies and procedures provide for the UCR Plan to hold funds in reserve. But the UCR Plan may not, through its policies and procedures or under any other authority, create exceptions to the law. Holding excess fee revenue in reserve is not one of the acceptable uses of UCR revenues authorized by statute.

Rather, UCR fees must first be used to pay the states their entitlement amount set by the statute (49 U.S.C. § 14504a(h)(3)(A)), then used to pay administrative expenses for the year (49 U.S.C. § 14504a(h)(3)(B)), and finally:

Any excess funds held by the depository after distributions and payments under paragraphs (3)(A) and (3)(B) shall be retained in the depository, and the fees charged under the UCR agreement to motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

49 U.S.C. § 14504a(h)(4).

The UCR Plan’s current practices clearly violate the plain language of the UCR statute. “[E]xcess funds” held in the depository shall be used by the Secretary to reduce fees in the next

fee year. Transferring excess funds from the depository and into investment accounts, and then arguing that they are beyond the reach of the Secretary to reduce fees as required by the statute, flagrantly violates the law. That this is the UCR Board “policy” does not make it lawful. Mr. Gutierrez did not address the legality of the UCR’s reserves policy in his response.

Nor do any facts justify the holding of a reserve, even if permitted by law. The UCR Plan has steadily collected more revenue than it needs over the last several years. The amounts of the state entitlement payments were fixed by the terms of the UCR statute (49 U.S.C. § 14504a(g)) and they have been routinely exceeded by annual fee revenue. The UCR fee revenue stream has also routinely covered UCR administrative costs. There is simply no evidence that the UCR Plan is at any risk for collecting less revenue than it needs, even if a financial reserve were permitted by law.

The only demand that has increased the last several years has been the administrative cost allowance sought by the contractors. With nothing in the record to support a belief that UCR fees are going to decrease, and with state entitlement payments fixed, the only explanation for the reserves policy would be to provide an increasing allowance for the UCR’s administrative costs. But this too is unsupportable. The administrative costs have been consistently lower than the administrative allowance for at least the last five years. The UCR was created to serve as a strictly defined revenue stream for several states, not for the business aspirations of UCR contractors.

C. Failing to apply excess funds from one year to lower the fees in the “next fee year” violates the UCR statute.

Mr. Gutierrez did not explain how UCR policies or practices comply with a statute that requires that excess funds *shall* be used by the Secretary to reduce UCR fees “for the next fee year.” Instead, Mr. Gutierrez attempts to rewrite the statute by saying the Secretary’s duty to

reduce fees comes in the next fee year after the UCR Plan gets around to accounting for it, in keeping with its own rules and policies, not in the *actual* next fee year as required by the statute.

Mr. Gutierrez states:

In the fee-setting process, the Board needs to have sufficient data regarding the amount of excess revenues it will collect for a given registration year in order to make the necessary calculations to adjust fees downward for the next registration year, so as to stop further overcollection and to offset (“return”) the excess revenues collected from registrants for that year. As a practical matter, if the Board is doing an excess revenues calculation for the 2021 registration year, then the “next fee year” when fees can be adjusted by the Secretary would be the 2023 registration year.

Here is why. The administrative period for each registration year begins on October 1 of the preceding year and ends on December 31 of the following year. Accordingly, by the time the Board has sufficient data on fee collections for a given registration year, the Plan is only a few months away from starting to collect fees for the following year, which is simply not enough time for the Board to make its recommendation to the Agency, for the Agency to conduct the rulemaking necessary to approve the adjusted fees and to publish the new fee schedule in the Federal Register, and for the Plan to implement the new fee schedule.

In other words, Mr. Gutierrez says that excess funds cannot be applied to the next fee year after the year they were collected because that is the way the UCR Plan has arranged its affairs. Nothing in the statute requires or authorizes the UCR to set up its collection and accounting schedule in a manner that otherwise conflicts with the UCR statute.

Furthermore, Mr. Gutierrez never claims that the UCR Plan has ever attempted to comply with the timing required by the statute. There is no data in the record that might support an analysis to determine when in a calendar year the UCR might have sufficient UCR registration data to be able to determine with reasonable accuracy the amount of fees that will be collected for that year and, therefore, the amount of excess funds it expects to collect. The UCR contractors have demonstrated, however, as a key component in the current fee proposal, their

ability to estimate future UCR revenue for future years. Why can these skills, or even these same data, not be used to estimate future excess funds late in a current year?

OOIDA is not proposing that the UCR Plan adopt any specific procedures that might best comply with the statute, but one can easily envision collection and accounting standards that would better serve the statute's requirements. All ongoing entities required to pay a UCR fee are required to have done so for the current year in which they are operating. Therefore, those entities must pay their fees by January 1 of each year to be able to conduct uninterrupted business in the participating states. OOIDA assumes, therefore, that the vast majority of these fees are paid early in the year.

UCR fees paid later and throughout the year, therefore, likely come from delinquent fee payers and newly formed businesses subject to the fee. By October, the majority of these later registrants for that year would likely have paid their UCR registration fees, trends in new registrants for the year could be identified, and the number of additional registrants could be predicted for the last three months of the year. A reasonable estimate of excess funds could be predicted and recommended to the Secretary in time to set the fees for the next calendar year. The UCR Plan could even propose to the Secretary new fee levels, with alternative fee amounts that may be applied for different ranges of excess funds realized in the last three months of the year. Whatever the solution, it is clear that the UCR has much work to do to bring its policies and procedures into compliance with 49 U.S.C. § 14504a(h). The fact that the UCR Plan has established policies that Mr. Gutierrez believes do not allow it to comply with the law is no excuse and should not be accommodated by the Secretary.

III. OOIDA's Responses to Mr. Gutierrez's May 9, 2022 Submission to FMCSA.

To enable the Secretary to better understand OOIDA's responses to the UCR Plan's additional information submitted May 9, 2022, OOIDA sets out its responses in the same general framework as Mr. Gutierrez's provided his additional information. **FMCSA's first request:**

1. Please provide detailed statements of financial position (balance sheets) for the Plan as of December 31, 2020, and December 31, 2021, as well as the end of the most recent period available for 2022. The balance sheets should identify and list all assets and liabilities of the Plan.
 - a. Please state whether the UCR Plan in fact holds excess revenue beyond the \$22 million stated in the Board of Directors' initial recommendation.
 - b. If the UCR Plan does hold additional excess revenues beyond the \$22 million previously identified, please provide in narrative form information on (1) how much excess revenue the UCR Plan has collected; (2) how the UCR Plan has used or plans to use those funds, and (3) why the UCR Plan is not currently recommending any such funds be used for a further reduction in the fees for 2023.

In response, Mr. Gutierrez provided the Plan's statements of financial position as of December 31, 2020 (audited), and December 31, 2021 and February 28, 2022 (unaudited), which was the end of the most recent period available in the current calendar year, with substantial explanatory comments regarding, inter alia, the Plan's investment accounts. In addition, Mr. Gutierrez acknowledged that the UCR Plan in fact does indeed hold excess revenue beyond the \$22 million stated in the Board of Directors' initial recommendation. Nevertheless, he denied that those funds are "available" to the UCR Plan, because the UCR Board adopted a Reserve Fund Policy on January 1, 2018 that permits it to hold investment accounts against future administrative costs of the UCR Plan.

This response confirms the UCR's stockpiling of excess funds in reserve and its intention to not apply those excess fund to the next fee year, without any explanation of how such a policy might be consistent with the law. OOIDA notes that, even if lawful, such reserves are unjustified

in light of the UCR Plan's consistent collection of millions of dollars more than the payments owed to the states and its own administrative cost allowance, combined.

FMCSA's second request:

2. A comment in response to the NPRM asserted that the UCR Plan holds \$42 million in excess revenue collected since at least 2020 that could be applied to reducing fees. Again, in answering the following questions, please feel free to refer to tables, charts, spreadsheets, or other materials previously submitted and publicly available or submitted in response to this Information Request.

Mr. Gutierrez acknowledged in his response to the second request that the UCR Plan does indeed have excess funds over and above the \$22 million stated in the Board's August 2021 fee recommendation. Mr. Gutierrez responded first by admitting that the Board had been in possession of \$22,899,946.40 in excess fees (above the \$22 million stated in the initial recommendation), but that by the time the NPRM was published, the excess amount had increased to \$25,862,458.65.²

In response to subpart (a), however, Mr. Gutierrez noted OOIDA's prior comment that the UCR Plan actually has over \$42 million in excess fees that could be (and OOIDA argues should be) used to reduce 2023 fees. Mr. Gutierrez argued that OOIDA's calculation is erroneous because it incorrectly assumes that the cash balances in various bank accounts and certificates of deposit are all available for use, but, according to Mr. Gutierrez, the funds held in the UCR Plan's investment vehicles are not "available for use" to reduce the 2023 UCR fee.

Mr. Gutierrez insists that the UCR Plan Board's adoption of its January 1, 2018 Reserve Fund Policy is sufficient basis for it to withhold the excess fees from the calculation of the 2023 UCR fee. But the Reserve Fund Policy is inconsistent with the UCR Act.

² *But see* Mr. Gutierrez's chart at Tab J of his response, which reports the excess fees for 2021 on February 28, 2021 to be \$23,223,551. The reported figures are self-contradictory.

Mr. Gutierrez explains in detail the UCR Plan’s practice of applying excess fees not to the next calendar year but to two years after. But “two years after” is not what the UCR Act requires.

FMCSA’s third request:

3. Regarding the 2023 Fee Proposal the UCR Plan submitted to FMCSA (file name “UCR 2023 Fee Recommendation Document.pdf”), FMCSA recognizes that some of the below requested information was previously provided, but now requests this further detail and clarification. (The referenced 2023 Fee Proposal has been placed in public docket FMCSA-2022-0001.) Please clearly state the derivations of all calculations, along with all sources, and explanations of any assumptions. Please also include narrative explanations when useful to providing a clear and complete answer.

Mr. Gutierrez explains the meaning of the “cap” for a given year (the sum of the state entitlements of \$107,777,059.81 plus the administrative allowance) and states that the Board bases its 2023 fee change recommendation on 2021 registration year revenues. Revenues exceeding this amount may be properly considered for fee adjustment purposes, according to Mr. Gutierrez. Nevertheless, all the revenues exceeding the cap are *not* included in the proposed 2023 fee reduction because Mr. Gutierrez declares the money in the UCR’s reserves unavailable for fee adjustment.

Mr. Gutierrez further seeks a \$250,000 hike in the permitted administrative cost allowance due to “cost escalations of various vendors.” OOIDA finds this questionable (and likely unnecessary) given that the UCR plan has not exceeded—or even come close to—spending all of its administrative cost allowance in recent years.

FMCSA’s fourth request:

4. FMCSA seeks further explanation regarding the Fee Calculations spreadsheet the UCR Plan submitted to FMCSA in August 2021 (file name “08.11.2021 Fee Calculations.xlsx”). As the charts contained in the Fee Calculations spreadsheet appeared partially in the UCR Plan 2023 Fee Proposal, FMCSA asks the UCR Plan to resubmit the charts in full. Again, in answering the following questions, do not use shorthand, abbreviations, or acronyms. Please do use plain language that can be understood by a non-technical audience. Specifically, please show the derivations of the estimates

enumerated below. For values arrived at by a formula, please provide a clear and thorough narrative explanation of (1) the formulas used to arrive at these estimates, and (2) what the estimates represent. For figures that were entered manually and do not contain a formula, please state “manually entered” and provide an explanation and source for their origin. Please clearly identify narratives in a way that corresponds to each cell referenced below. Any references to cell numbers listed below correspond to the values contained in “08.11.2021 Fee Calculations.xlsx” spreadsheet referenced above.

Mr. Gutierrez does provide, as requested, the complete Fee Calculations spreadsheet and explains the sources for numbers that have been manually entered. In OOIDA’s judgment, Mr. Gutierrez’s explanations throughout his response to the FMCSA are anything but that which can be “understood by a non-technical audience.”

FMCSA’s fifth request:

5. Please provide, in narrative form, an explanation of why any excess revenues collected by the UCR Plan and participating States for registration year 2021 are not available to make an adjustment in fees for registration year 2022.

Mr. Gutierrez begins his response as follows:

In the fee-setting process, the Board needs to have sufficient data regarding the amount of excess revenues it will collect for a given registration year in order to make the necessary calculations to adjust fees downward for the next registration year, so as to stop further overcollection and to offset (“return”) the excess revenues collected from registrants for that year. As a practical matter, if the Board is doing an excess revenues calculation for the 2021 registration year, then the “next fee year” when fees can be adjusted by the Secretary would be the 2023 registration year.

As explained earlier, *supra*, Mr. Gutierrez says that excess revenues cannot be applied to the next fee year from the year it was collected because that is the way the UCR Plan has arranged its affairs. There is nothing in the statute that requires or authorizes the UCR set up its collection and accounting schedule in a manner that otherwise conflicts with the UCR statute.

There is no evidence that the UCR Plan has ever attempted to comply with the timing required by the statute. There is no data in the record that might support an analysis to determine when in a calendar year the UCR might have sufficient UCR registration data to be able to

determine with reasonable accuracy the amount of fees collected for that year and, therefore, the amount of excess funds it expects to collect, so as to apply the expected excess funds to the next year's fees.

FMCSA's sixth request:

6. Please provide the total fee revenue received by the Plan for each of the six fee brackets for the registration years 2020, 2021, and 2022 to the most recent reasonably available date. This information should also include fees collected by any participating States operating their own fee collection system.

Mr. Gutierrez's response and accompanying charts confirm that in for the current 2022 registration year, the Plan has already collected \$114,385,710—*already* \$2,608,651 over the "Cap" of \$111,777, 060. And the Plan will continue to collect fees for the 2022 registration year *until the end of 2023*. Mr. Gutierrez reports that for the 2021 registration year, the UCR Plan has collected \$123,129,829 to date, already \$11,352,769 in excess of the cap. But the estimated total collections when the registration year closes at the end of 2022 are expected to be \$132,360,645.85,³ which is \$20,583,586 over the cap. For 2020, the total collections reported at Tab N were \$114,820,508, which is \$3,043,449 over the cap. But at page 3 of his response, Mr. Gutierrez reports that the 2020 excess fees collected were \$12,775,613.19. These inconsistencies render the realities of the UCR Plan's funds indecipherable to one who is not a trained accountant.

FMCSA's seventh request:

7. Please provide the total number of fee paying registrants for each of the six fee brackets for the registration years 2020, 2021, and 2022 to the most recent reasonably available date.

Mr. Gutierrez's response to this request was included in the charts provided in response to Question 6.

³ See Tab G of Mr. Gutierrez's submission.

FMCSA's eighth request:

8. Please provide the number of brokers, freight forwarders and leasing companies registered under the UCR Agreement for registration years 2020, 2021 and for 2022 to [the] most recent available date.

Mr. Gutierrez provided the following table to respond to the foregoing question.

REGISTRATIONS BY TYPE AND YEAR			
Registration Year	Freight Forwarder	Broker	Leasing Company
2022 ¹⁰	8,317	10,683	1,350
2021	12,360	17,116	1,847
2020	8,445	14,193	1,555

OOIDA, however, believes that Mr. Gutierrez's table demonstrates just how under-enforced the UCR fee is against brokers, freight forwarders, and leasing companies. OOIDA's comments showed that according to FMCSA, there were 22,508 brokers and freight forwarders registered with the agency (OOIDA First Comments, Exhibit L.) The UCR's consistent failure to enforce UCR fees on brokers, freight forwarders, and leasing companies renders the amount that motor carriers must pay indefensibly higher. The states have received their full UCR entitlement because the UCR Plan keeps the fees higher than authorized by the statute and has initiated programs to increase enforcement on motor carriers. By predicting compliance to set fees, the UCR Plan makes up for state inaction to enforce the fees on all parties intended to register under the UCR statute.

FMCSA's ninth request:

9. Please provide a list of all suggestions or proposals the Board of Directors of the Plan has received since January 1, 2020, regarding programs, pilots, or other proposed efforts specifically designed to improve UCR fee payment compliance by motor carriers, brokers, freight forwarders, and/or truck leasing companies. Please include in the list, at a minimum, the following information regarding the suggestion or proposal:
 - a. the identity of the person and/or organization making the proposal;
 - b. the date of receipt of the proposal by the Board of Directors;
 - c. a brief narrative description of the proposal;
 - d. whether each such proposal was on the agenda for discussion or action at a meeting of the Board of Directors. If so, who raised it, on what date, and what was the outcome of that discussion? Please provide a citation to the minutes of the meeting involved.

Mr. Gutierrez has failed to provide a complete response to FMCSA's question. For example, Mr. Gutierrez did not report the following:

- At the Commercial Vehicle Safety Alliance conference in April 2022, the UCR Plan gave a workshop to CVSA members on enforcement issues. In addition, at the same conference, the UCR Plan sponsored a lunch for attendees on a day that there were no other conference meetings scheduled. OOIDA is unaware of which Board Member or Subcommittee proposed these events but knows that the presentation and lunch provided at the CVSA conference were not brought before the UCR Board for a vote, nor is the proposal to hold these events on any Board Agenda. Rather, the Board Chair, Vice Chair, and Mr. Gutierrez merely informed the Board that the CVSA Conference events were to occur.
- The UCR Plan is planning to conduct a National Training Center event with FMCSA. Upon information and belief, this event was discussed by the Board, but never brought before the Board for a vote.

- At almost all if not all Board Meetings, as well as Audit Subcommittee meetings talking about UCR Enforcement, and at actual training, there is frequent discussion about how states' enforcement officers should write up violations of the UCR by motor carriers, and which federal regulation those "offenders" are violating.
- There was an Audit Training for state employees responsible for audits in their individual states that was planned over a period of 6 months or more but was neither brought before nor approved by the Board.
- Mr. Gutierrez and the UCR Plan consistently ignore the concerns of individual Board members that the Plan is losing money by not enforcing the UCR fees that are intended to be paid by brokers, freight forwarders, and leasing companies. Such enforcement would, of course, require some creativity, careful thought, and actual effort, since enforcement against these entities cannot be carried out via roadside inspections. This has been brought up and discussed at length in numerous board and subcommittee meetings. Attached as Exhibit A is an email between Tamara Young of OOIDA, Mike Hoeme (Audit Subcommittee Chair and Board member), Bob Pitcher (ATA), Ken Riddle (FMCSA), Avelino Gutierrez (Executive Director), Elizabeth Leaman (UCR Chair), and Dave Lazarides (DSL Contractor, whose company also employs the UCR Auditor/Enforcement Manager). Attached as Exhibit B is a copy of the Unified Carrier Registration Plan Board of Directors Meeting held December 10, 2020 which contains at pp. 3-4 a discussion of the engagement of a UCR Auditor/Enforcement Manager.
- OOIDA argues that this engagement (which adds to the DSL contract) is not actually intended to improve enforcement for the UCR Plan, given that the states are already required to audit UCR enforcement. In other words, the intention of this engagement is to assist the

states with enforcement of the UCR, which is the states' responsibility according to the UCR Agreement, and not the responsibility of the Board. The Board consistently and apparently deliberately ignores enforcement against brokers, freight forwarders, and leasing companies. This results in motor carriers bearing the burden of other entities' failure to pay the UCR registration fees.

- Concerning the issues Mr. Gutierrez did discuss in his responses, OOIDA comments as follows:

(1) Mailings and Postcards: Once again, the UCR Plan accepted responsibility and costs of the states to be expended in solicitations to motor carriers. Moreover, as has been raised numerous times in Board meetings, the National Registration System contains invalid and outdated information. Using it as a source even for enforcement against motor carriers is inefficient and ineffective, due to the turnover in the industry. And the NRS would not contain information about brokers, freight forwarders, and leasing companies. FMCSA's system itself sometimes supplies incorrect information to the NRS system. Any enforcement efforts to be undertaken by postcards or emails will be a waste of money, because there is nothing indicating that the postcards and emails will ever arrive at their intended destination.

(2) Pilot Projects: Pilot Project #2 (New Entrant in Non-Participating States) at least as of June 7, 2022, has never turned a profit and is not accomplishing the benchmarks necessary for it pay for itself by the end of the year. Since the launching of this project, its failure to be cost-effective has been raised repeatedly in subcommittee meetings.

(3) IRP Fee Calculator: Mr. Gutierrez discusses the Development, Hosting and Maintenance of an IRP Centralized Fee Calculator which would have been designed to hard stop if the user was not yet registered with the UCR. *See* Gutierrez’s response to FMCSA at page 29. This project was presented as an agenda item to the UCR Board at the April 2022 Board meeting, without having been vetted or recommended by any subcommittee, in contravention of 49 U.S.C. § 14504a(d)(5)(D), which requires that any matter coming before the Board must be considered first by the (then-lapsed) Industry Advisory Subcommittee, which must make a recommendation to the Board on its implementation. Mr. Gutierrez and Seikosoft began developing the IRP fee calculator—expending UCR funds and/or time and effort—without presenting the concept to the Board, or any Subcommittee. Thus the project reached the stage of Board approval, and was placed on the April 2022 Board Agenda, without adherence to or even a nod in the direction of the statute, which would have required subcommittee approval and a recommendation by the Industry Advisory Subcommittee. Notably, when questioned at the April 2022 Board meeting about the pilot project, the individuals who proposed the IRP fee calculator pilot project acknowledged that they had neither consulted with the IRP Plan nor conducted market research to determine that there was an adequate audience that would use the proposed calculator. The Board, over objection, voted to allow the project to go forward in the form of a presentation to the IRP Board. At the June 2022 Board meeting, Mr. Gutierrez reported that the individual promoters of the IRP Fee Calculator had presented the concept to the IRP Board, and that the IRP Board rejected the

proposal. The Executive Director came up with the idea of an IRP calculator without any approval from the Board, or even to a Subcommittee. The IRP Fee Calculator was a waste of time, effort, and UCR Plan funds. or to the UCR Plan.

These are just a few the efforts of the UCR contractors to engage the UCR Plan in state enforcement activities. And certainly, Mr. Gutierrez's list was far from complete.

IV. Additional issues that have come to light that the Secretary should consider in reviewing the UCR Fees.

Because this fee-setting process is the only opportunity for the public or OOIDA to provide input to the Secretary that it believes should be taken into consideration in approving or disapproving the 2023 proposed fee schedule, OOIDA raises the following issues that further support its position that the UCR Plan is not being appropriately managed.

To put it bluntly, the UCR Plan Board is and has been acting improperly. The UCR Act is plain. In addition to the three practices raised by OOIDA in its initial comments, there are other instances of the UCR Plan Board's failure to adhere to the statute. For example:

- By statute, the UCR Plan Board must have an Industry Advisory Subcommittee that consists entirely of representatives of the motor carrier industry that are subject to the UCR annual fee. 49 U.S.C. § 14504a(d)(5)(A) and (D).
- Again, by statute, the Industry Advisory Subcommittee “*shall* consider any matter before the board and make recommendations to the board.” 49 U.S.C. § 14504a(d)(5)(A) (emphasis added).
- Every *other* subcommittee of the UCR Plan Board “shall include representatives of . . . the motor carrier industry.” *Id.*

However, not only did the UCR Plan Board and its contractors allow the Industry Advisory Subcommittee to lapse, that Subcommittee held an “initial organization meeting” on May 19, 2022, *see* 87 Fed. Reg. 29783 (May 16, 2022). An “initial organization meeting” would have been superfluous had the Subcommittee been a continuously functioning entity. When asked

how and why the mandatory Subcommittee had been allowed to lapse, the response was that “it didn’t really”; instead, it merely had a diminished role since its former chair retired. The questioner asked why there had been no announcements or agendas from the Industry Advisory Subcommittee in the Federal Register for quite some time. The response was that since everyone on the Industry Advisory Committee is also on the Board, its work had been ongoing, just in the context of the Board meetings instead of as a separate subcommittee.

That is not what the statute provides for the Industry Advisory Subcommittee, nor is it how that Subcommittee is intended to function. Indeed, that is not how UCR Plan Board thinks its Subcommittees are intended to operate. For example, the Audit Subcommittee, the Finance Subcommittee, and the Training and Education Subcommittee have regular meetings, engage in thorough and open discussions of issues that will be presented to the Board, and make recommendations based on these comprehensive discussions and considerations. Not so the Industry Advisory Subcommittee.

The statutory language concerning the Industry Advisory Subcommittee is not precatory. It is mandatory. The Industry Advisory Subcommittee “*shall consider any matter before the board and make recommendations to the board.*” 49 U.S.C. § 14504a(d)(5)(A) (emphasis added). The failure of the Industry Advisory Subcommittee to meet and discuss and vote upon its recommendations to the Board means that an important step in the operation of the Board has been and is being skipped altogether. An observer is forced to consider that the input of the industry advisors on the Board is being deliberately diminished. Indeed, OOIDA asks, are any decisions that the UCR Plan Board has made without seeking the recommendation of the Industry Advisory Subcommittee—including the 2023 proposed fee reduction—even lawful as proposed to the Secretary?

For example, concerning at least some investments and/or reinvestments, upon information and belief, the Board has not sought a recommendation from the Industry Advisory Subcommittee. OOIDA is unaware whether the Industry Advisory Subcommittee had any input whatsoever into the initial decision to permit the Board to establish reserve accounts. Notably, at least two industry representative members of the Board have consistently voted in the negative when proposals to make investments or reinvestments have come before the Board, but those industry representatives have been consistently outvoted.

OOIDA's original comments noted that the UCR Plan regularly collects more than the requisite payments to the States (\$107,777,059.81 per annum) and its continually increasing permitted administrative costs (\$3.5 million in 2019, \$4 million in 2020-22, and (requested) \$4,250,000 in 2023). The Board has not established a need for reserves, even if they were permissible. As of December 31, 2021, the Board was holding well over \$91 million in bank accounts and reserves. *See* Exhibit C. By April 30, 2022, all the state entitlements for the 2022 registration year had been paid, and the total in the UCR Plan's bank accounts and reserves was \$64,566,509.64. *See* Exhibit D.

Further diminishment of the role of the motor carrier industry is also evident. Despite the UCR Act's requirement that every subcommittee have a representative of the motor carrier industry in its ranks, *see* 49 U.S.C. Sec. 14504a(d)(6)(D), that requirement has not been consistently followed. At least during the creation of the current fee proposal, and in recent memory, there has been no motor carrier representative on either the Audit Subcommittee. Consistent compliance with the provision of the statute that requires industry representation on every subcommittee would at least provide additional oversight on the current

UCR Plan activity on these important issues. OOIDA should not have to state that such representation is mandatory.

V. Outstanding unanswered questions.

In its first set of comments submitted February 23, 2022, OOIDA pointed out that during the 2022 registration year, a motor carrier with a single truck pays a per-truck fee of \$59, whereas a motor carrier with a large fleet could pay as little as \$5.84 per vehicle. In the proposed 2023 fee schedule, a motor carrier with a single truck will pay \$42 per truck, while a large fleet may pay as little as \$4.26 per vehicle.

To comply with the UCR statute, which demands a *progressive* fee structure, FMCSA must only approve fees for small carriers that are at least as low per truck on all tiers for both small and large motor carriers. This may mean that the low end of the fee range per truck instead of the high end should be equal among all tiers. The high side of the fee range may need to increase along with the number of trucks a motor carrier operates to comply with the UCR statute. FMCSA's request for more information did not include, and Mr. Gutierrez did not address, any questions about how the specific fees for each UCR tier was determined and calculated or how the recommended tier structure was progressive.

VI. Conclusion

OOIDA's members already face too many fees from all levels of government to conduct the essential businesses they operate. It adds insult to injury when a fee is imposed upon them that is higher than permitted under the law. OOIDA appreciates FMCSA's action to reopen the comment period on this rulemaking, and we urge the agency to exercise its oversight authority to approve lower fees that are no higher than required by law.

Thank you for your consideration of OOIDA's comments on Mr. Gutierrez's responses to FMCSA's request for information.

EXHIBIT INDEX TO OOIDA’S COMMENTS – 06/28/2022

Exhibits	Descriptions
A	Email dated August 4, 2020, from Tamara Young to Bob Pitcher re: Regulation Brokers
B	UCR Plan Board Meeting Minutes (December 10, 2020)
C	UCR Bank Balance Summary Report — December 31, 2021
D	UCR Bank Balance Summary Report — April 30, 2022

Re: Regulation of Brokers

TAMARA YOUNG

Tue 8/4/2020 3:20 PM

To: Bob Pitcher <[REDACTED]>

Cc: Mike Hoeme <[REDACTED]>; Riddle, Kenneth (FMCSA) <[REDACTED]>; Avelino Gutierrez <[REDACTED]>; Elizabeth Leaman <[REDACTED]>

I agree Bob. The states signed up for the UCR, the states are obligated to enforce the UCR. Regardless of its a motor carrier, broker or freight forwarder. The states not enforcing the entire UCR Act should be held accountable.

Thank you,
Tamara Young

On Aug 4, 2020, at 10:52 AM, Bob Pitcher <[REDACTED]> wrote:

Ah, now I get it, Mike. The states in that boat are all in violation of the requirements of the UCR Act - see paragraph (e)(1) (A)....
RCP

Sent from my iPad

On Aug 4, 2020, at 8:20 AM, Mike Hoeme <[REDACTED]> wrote:

Good morning,

For the record, I'm not aware of any unregistered Brokers in Kansas. Recently, as part of my review of the national Broker issue raised by Tamara, I have requested the Seiko Soft team add two reports in the NRS. The first report would identify all active Brokers by state and a second report will list the unregistered Brokers by state.

Regarding the regulations of Brokers, I agree with you to this extent. In Kansas, our adoption of Part 367 through our administrative regulations allows us to collect fees from Brokers. Beyond that, our implementing statutes are specific to Motor Carriers, not Brokers we cannot pursue civil fine against a broker that refuses to pay their UCR. I have visited with many State officials on this issue and all have the same concern/problem. This is why I reached out to Ken and his team at FMCSA a few weeks ago, they regulate Brokers for operating authority. The States do not have the same resources/authority with Brokers that we do with the Motor Carriers.

The States jurisdiction "problem" is entirely the problem when a Broker refuses to pay the UCR.
Thanks,

Mike J. Hoeme
Director

<image001.jpg>

[REDACTED]

[REDACTED]

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From: Bob Pitcher <[REDACTED]>
Sent: Tuesday, August 4, 2020 9:25 AM
To: TAMARA YOUNG <[REDACTED]>
Cc: Mike Hoeme <[REDACTED]>; Riddle, Kenneth (FMCSA) <[REDACTED]>; Avelino Gutierrez <[REDACTED]>; Elizabeth Leaman <[REDACTED]>
Subject: Re: Regulation of Brokers

I agree completely, Tamara. I think the jurisdiction "problem" is entirely a false issue.
RCP

On Tue, Aug 4, 2020 at 7:20 AM TAMARA YOUNG <[REDACTED]> wrote:

Good morning,

I understand \$59 for a broker isn't much on the individual basis. However collectively UCR Plan is losing an enormous amount. When we collect the amounts owed, and everyone does their part in paying the UCR, then the responsibility doesn't rely solely on the carriers. If the smaller fleets are our biggest filing bracket, this means the smaller carriers are paying for brokers and freight forwarders which are obligated to pay the UCR but are not. I have found some brokers who haven't paid the UCR in the last 4 years of being in operation.

If the participating states have adopted FMCSR regulations part 367, then why doesn't this give the states grounds to enforce the UCR payment on a state level?

Thank you,
Tamara

On Jul 31, 2020, at 1:12 PM, TAMARA YOUNG <[REDACTED]> wrote:

Thank you all for your input and discussion. I will be reviewing your correspondence and giving my input soon.

Have a great weekend all,

Tamara Young

On Jul 28, 2020, at 10:47 AM, Mike Hoeme
[REDACTED] wrote:

Thank you!
Mike

Sent from my iPhone

On Jul 28, 2020, at 9:55 AM, Riddle, Kenneth
(FMCSA) [REDACTED] wrote:

Mike – response from our Counsel’s
Office:

Freight forwarders in some cases are operating commercial motor vehicles (and have a USDOT number assigned) and should be subject to roadside inspections which are an opportunity for UCR enforcement. Freight forwarders not operating CMVs and brokers, on the other hand, are not subject to roadside inspections. UCR enforcement in those cases would depend on other enforcement mechanisms. States do have jurisdiction over brokers per 49 U.S.C. 14504a(i) (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);

If a participating State does not have laws and regulations to provide enforcement mechanisms (i.e. reasonable fines and penalties) for brokers,

then it is up to the State to rectify that deficiency. FMCSA does not have much authority to compel or enforce compliance with the UCR Agreement or the applicable fees by registered brokers. There is a very cumbersome enforcement procedure set out in 49 U.S.C. 14504a(i)(1)-(3) involving civil injunctive relief to compel compliance with an order, although the origin of such an order is not clear. But the Department of Justice will likely be most reluctant to commit litigation resources to compelling compliance by a broker to pay the applicable fee (currently only \$59). In any event, this specific enforcement mechanism probably supersedes the availability of FMCSA's general civil penalty authority under 49 U.S.C. 14910.

v/r,
Ken Riddle

From: Mike Hoeme
[mailto: [REDACTED]]
Sent: Monday, July 27, 2020 12:16 PM
To: Riddle, Kenneth (FMCSA)

Cc: 'Avelino Gutierrez' [REDACTED]
[REDACTED] 'TAMARA YOUNG'

Subject: Regulation of Brokers

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning, Ken.

Recently, OOIDA has raised their concern of unregistered Brokers in regards to the UCR. I have been visiting with States and finding out many, if not all, do not have jurisdiction over Brokers. As you're familiar, the FMCSA economically regulates Brokers in Title 49 CFR Part 371, is there anything FMCSA can do to promote/require Brokers to comply with Part 367?

FYI, the Single State Registration System (SSRS) that was replaced by the UCR did not apply to Brokers.

Thanks for your help,

Mike J. Hoeme

Director

<image001.jpg>



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Unified Carrier Registration Plan

Board Attendance

Elizabeth Leaman, Chairwoman of the Board
Robert Pitcher, Vice Chairman of the Board
Ken Riddle
Scott Morris
Sandra Bowling
Chris Burroughs
Carol Fallin
Mike Hoeme
Monte Wiederhold
Terrence Mercer
William Debord
Crystal Stevens
Suzanne Stillwell
Tamara Young

Others in Attendance

Avelino Gutierrez, UCR Executive Director
Alex Leath, Chief Legal Counsel

Kellen Company:

Dave Scholz, Lori Barker-Cummings, Daniel Choppa, John Mazzaglia, Abiola Bankole-Hameed, Matt Mantione, Katherine Thurmond, Tom Gooding

Seikosoft

Toby Piquet, Lori Lefai

States in Attendance

AL, AK, CA, GA, IA, IL, IN, KS, KY, ME, MA, MI, MN, NC, NE, OH, PA, RI, TX, WA, WI

**UNIFIED CARRIER REGISTRATION PLAN
BOARD OF DIRECTORS MEETING
December 10, 2020**

MINUTES

- I. Welcome and Call to Order** – Elizabeth Leaman, UCR Board Chair
The UCR Board Chair welcomed attendees, called the meeting to order at 12:05pm ET, called roll for the Board, confirmed the presence of a quorum, and facilitated self-introductions.
- II. Verification of Meeting Notice** – Avelino Gutierrez, UCR Executive Director
The UCR Executive Director verified publication of the meeting notice on the UCR website and distribution to the UCR contact list via e-mail on November 5, 2020 followed by subsequent publication of the notice in the *Federal Register* in vol. 85 no. 236.
- III. Review and Approval of Board Agenda** – Elizabeth Leaman, UCR Board Chair
The Agenda was reviewed, and the Board considered adoption.

A MOTION was MADE and SECONDED to approve the agenda for the December 10, 2020 Board of Directors Meeting. The MOTION CARRIED unanimously.
- IV. Approval of Minutes from the November 5, 2020 UCR Board Meeting** – Elizabeth Leaman, UCR Board Chair
Draft Minutes of the November 5, 2020 Board of Directors meeting were reviewed. The Board considered action to approve.

A MOTION was MADE and SECONDED to approve the November 5, Board of Directors Meeting Minutes. The MOTION CARRIED unanimously.
- V. Report of FMCSA** – Kenneth Riddle, FMCSA Representative
The Federal Motor Carrier Safety Administration (FMCSA) provided a report on any relevant activity.

Suzanne Stillwell, Carol Fallin, Sandy Bowling, and Elizabeth Leaman were the four members reappointed to the Board of Directors.
- VI. Updates Concerning UCR Legislation** – Elizabeth Leaman, UCR Board Chair
The UCR Board Chair did not have any updates regarding UCR legislation since the last Board meeting.
- VII. Discussion Regarding Development of Board Policy for the Mailing of Postcards** – UCR Executive Director
The UCR Executive Director led a discussion regarding the need for states and the Board to mail postcards to unregistered carriers. Items considered included, defining the window of time for states/Board to mail postcards and require states to participate in solicitation campaigns. After discussing options, the Board decided to adopt a policy regarding the requirements for mailing postcards to unregistered carriers.

A MOTION was MADE and SECONDED to approve the Board Policy for the Mailing of Postcards with the Amendment of the addition of “Prior to or”. The MOTION CARRIED with one negative vote (Tamara Young).

VIII. Potential Contract Extensions for AAG3 LLC and DSL Transportation Services, Inc. – Elizabeth Leaman, UCR Board Chair

The UCR Board Chair led a discussion of the annual renewal of existing contracts with AAG3 LLC (Avelino Gutierrez) and DSL Transportation Services, Inc. (Dave Lazarides). The Board may decide to renew the contracts for an additional one-year term.

A MOTION was MADE and SECONDED to extend the contract of AAG3 LLC for another one-year term. The MOTION CARRIED with two negative votes (Monte Wiederhold and Tamara Young).

The decision surrounding DSL Transportation Services, Inc was moved to Agenda Item XI B.

IX. Chief Legal Officer Report – Alex Leath, UCR Chief Legal Officer

The UCR Chief Legal Officer provided an update on the status of the March 2019 data event, the Twelve Percent Logistics litigation, several cease and desist letters sent to third party permitting service providers, and other matters.

A MOTION was MADE and SECONDED to empower the Board Chair to decide whether to appeal the decision of the court concerning the award of attorney’s fees in the Twelve Percent Logistics litigation after consultation with the Vice Chair, Executive Director and Chief Legal Officer. The MOTION CARRIED with one abstention (Ken Riddle) and one negative vote (Monte Wiederhold).

X. Update on the RSM Security Assessment Pertaining to the NRS Audit – Tom Gooding, UCR Technology Director

Tom Gooding, The UCR Technology Director, provided an update on the security assessment deliverables from RSM’s security team pertaining to the NRS Audit.

- AWS Security Assessment
- Cloud Vulnerability and Configuration Review Sample
- RSM Sample Penetration Testing Report

XI. SUBCOMMITTEE REPORTS

Audit Subcommittee – Mike Hoeme, UCR Audit Subcommittee Chair

A. Next Steps Regarding the 2019 Audit Deficiencies by Idaho and Utah – Mike Hoeme, UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair discussed the next steps regarding the 2019 Audit Deficiencies by Idaho and Utah. The Board may authorize additional action to be taken against Idaho and Utah.

A MOTION was MADE and SECONDED to send a letter regarding the 2019 Audit Deficiencies to the agency heads of Idaho and Utah. The MOTION CARRIED unanimously.

B. Consideration of the Addition of a UCR Auditor/Enforcement Manager – Mike Hoeme, UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will lead a discussion considering the potential addition of a UCR Auditor/Enforcement Manager to provide mentoring and other audit assistance to participating states. The Board may take action to add a UCR Auditor/Enforcement Manager and include that position in the budget for fiscal year 2021.

A MOTION was MADE and SECONDED to hire a UCR Auditor/Enforcement Manager. The MOTION CARRIED with two negative votes (Monte Wiederhold and Tamara Young) and one abstention (Ken Riddle).

A MOTION was MADE and SECOND to amend the DSL Contract to include the Auditor/Enforcement Manager position and the additional funds required. The MOTION CARRIED with one negative vote (Monte Wiederhold).

C. Discuss the Possible Requirement for the States to Declare in Writing Their Audit Policy with Respect to UCR – Mike Hoeme, UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair led a discussion of the possibility of requiring the states to formally declare, in writing, certain goals, objectives, and procedures regarding their UCR audit policy. In addition, the Board discussed a desire to maintain a system to better monitor state(s) when turnover in staff leads to UCR audit and enforcement deficiencies.

D. Independent Auditor's Final Report (2017-2018) – Dave Scholz, UCR Depository Manager

The UCR Depository Manager discussed the outcome of the financial statement audits of the Depository for each of the 12- month periods ended December 31, 2018 and 2017.

E. Consideration of an Audit Contract of the NRS by RSM – Avelino Gutierrez, UCR Executive Director

The UCR Executive Director led a discussion around the consideration and possible approval of an audit contract of the NRS by RSM. The Board discussed a desire to approve an audit contract between the Board and RSM.

A MOTION was MADE and SECONDED to approve an Audit Contract of the NRS by RSM. The MOTION CARRIED unanimously.

F. FARs Audit Procedure for Motor Carriers in Foreign Jurisdictions and Non-participating States – Mike Hoeme, UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair led a discussion on the unique issues regarding Focused Anomaly Reviews (FARs) of non-United States based motor carriers and motor carriers based in non-participating states. The Board took action to adopt new FARs audit procedures to be utilized by participating states for these motor carriers.

A MOTION was MADE and SECONDED the approval of the Audit Procedure for Motor Carriers in Foreign Jurisdictions and Non-participating States. The MOTION CARRIED unanimously.

G. Discussion of Vehicles Conducting Emergency Operations – Mike Hoeme, UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair discussed exempting electric utility and other businesses operating vehicles interstate only when responding to an emergency or natural disaster from UCR requirements in accordance with 49 C.F.R. Part 390.23, unless the states involved in its interstate travel have waived those requirements. The Board took action to exclude these carriers from the definition of the term “motor carrier” and therefore exempt from registration

under the Unified Carrier Registration Act. This vote required a $\frac{3}{4}$ vote of all Directors present at the meeting to pass under 49 U.S.C. § 14504a(d)(4)(C).

A MOTION was MADE and SECONDED to provide a UCR exemption to the definition of the term “motor carrier” to the proposed carriers. The MOTION CARRIED with $\frac{3}{4}$ of Board Members present voting in the affirmative (11 votes), two negative votes (Robert Pitcher, and Chris Burroughs) and one abstention (Kenneth Riddle).

H. Update on the Audit Functionality in the National Registration System – Toby Piquet, Seikosoft

Seikosoft provided updates on the NRS Audit Module, solicitation campaigns (new entrant, unregistered, non-universe motor carriers, etc.), and other relevant topics for the Board.

Finance Subcommittee – Scott Morris, UCR Finance Subcommittee Chair

A. Discussion Regarding the Board to Self-Insure Against the Risk of Directors and Officers Liability Claims – Alex Leath, UCR Chief Legal Officer and Dave Scholz, UCR Depository Manager

The UCR Chief Legal Officer and the UCR Depository Manager led a discussion regarding the purpose for Officers and Directors liability insurance and discussed the cost effectiveness of the option to self-insure rather than procure insurance from a third party.

A MOTION was MADE and SECONDED to approve and authorize the establishment of a self-insurance fund to provide a financial reserve up to \$1 million for potential directors and officers liability claims. The MOTION CARRIED unanimously.

B. Review UCR Bank Balance Summary Report – Dave Scholz, UCR Depository Manager
The UCR Depository Manager reviewed the UCR Bank Balance Summary Report as of November 30, 2020 and answered questions from the Board.

C. Review 2020 Administrative Expenses Through November 30, 2020 – Dave Scholz, UCR Depository Manager

The UCR Depository Manager presented the administrative costs incurred for the period of January 1, 2020 through November 30, 2020, compared to the budget for the same time-period, and discussed all significant variances.

D. Presentation of the proposed 2021 Administrative Expenses Budget – Dave Scholz, UCR Depository Manager

The UCR Depository Manager presented the proposed administrative expenses budget for calendar year 2021 to the Board.

A MOTION was MADE and SECONDED to approve the 2021 budget as presented. The MOTION CARRIED.

E. Status of 2020 and 2021 Registration Years Fee Collections and Compliance Percentages – Dave Scholz, UCR Depository Manager

The UCR Depository Manager provided updates on the results of collections and registration compliance rates for the 2020 and 2021 registration years.

Education and Training Subcommittee – Carol Fallin, UCR Education and Training Subcommittee Chair

Update on Basic Audit Training Module and Flow Chart/Decision Tree – Carol Fallin, UCR Education and Training Subcommittee Chair

The UCR Education and Training Subcommittee Chair, provided an update on the development of the Basic Audit Training Module and Flow Chart/Decision Tree.

XII. Contractor Reports – Avelino Gutierrez, UCR Executive Director

- **UCR Executive Director Report** – Avelino Gutierrez
The UCR Executive Director provided a report covering recent activity for the UCR Plan.
- **DSL Transportation Services, Inc.** – Dave Lazarides
DSL Transportation Services, Inc. reported on the latest data from the FARs program, discuss motor carrier inspection results, and other matters.
- **Seikosoftware** – Toby Piquet
Seikosoftware will provide an update on recent/new activity related to the NRS.
- **UCR Administrator Report (Kellen)** – Lori Cummings, UCR Operations Director and Dave Scholz, UCR Depository Manager
The UCR Administrator provided its management report covering recent activity for the Depository, Operations, and Communications.

XIII. Public Comment – James Lamb, Executive Director of Small Business in Transportation Coalition
Mr. Lamb, the Executive Director of Small Business in Transportation Coalition, was allotted five (5) minutes to address the UCR Board regarding several issues of concern to the SBTC.

XIV. Other Business – Elizabeth Leaman, UCR Board Chair
The UCR Board Chair called for any business, old or new, from the floor.

XV. Adjournment – Elizabeth Leaman, UCR Board Chair
The UCR Board Chair adjourned the meeting at 3:18pm ET.

Docket No. FMCSA-2022-0001
Fees for the Unified Carrier Registration Plan and Agreement; Notice of Proposed Rulemaking

**Response of the Unified Carrier Registration Plan to the
Federal Motor Carrier Safety Registration's Request for Information**

TAB G – UCR Bank Balance Summary Report December 31, 2021

UNIFIED CARRIER REGISTRATION PLAN
BANK BALANCE SUMMARY REPORT
December 31, 2021

OOIDA EXHIBIT C
6/28/2022 Comments

Month	Accumulated Interest												
	Total	NRS	Board Ops	Fin. Reserve	Un. Exp. Reserve	Insurance Reserve	Capital Reserve	Depository	Administrative	2020 Excess	2021 Excess	2022 Excess	Other Excess
Dec-21													
BND													
Account Title													
CD (Mat 2/05/22)	2,656,068.63			2,650,000.00					6,068.63				
CD (Mat 8/05/22)	2,668,866.99			2,650,000.00					18,866.99				
CD (Mat 10/23/22)	6,202,072.50							2,072.50			6,200,000.00		
CD (Mat 11/12/22)	2,650,435.62			2,650,000.00					435.62				
CD (Mat 12/20/22)	15,000,000.00							0.00			15,000,000.00		
Checking	0.01												0.01
2020 Savings	12,778,817.29							3,908.10		12,774,909.19			
2021 Savings	184,459.49							2,850.62			181,608.87		
2022 Savings	0.00												
Holding	311,912.07						0.00	155,694.03	858.04	704.00	1,469.00		153,187.00
SunTrust													
Account													
Checking	121,222.61		121,222.61										
State Funding	40,585,385.52	39,712,339.27	18,505.18				0.00	66,597.07			787,944.00		
Daily Liquidity (DLA)	8,611,889.40		768,598.21	4,050,000.00	1,750,000.00	1,750,000.00	288,575.00		4,716.19				
GRAND TOTAL	91,771,130.13	39,712,339.27	908,326.00	12,000,000.00	1,750,000.00	1,750,000.00	288,575.00	231,122.32	30,945.47	12,775,613.19	22,171,021.87	0.00	153,187.01
Administrative Expenses - YTD December 2021			3,091,674.00										
Administrative Allowance			4,000,000.00										

COMMENTS:

Definitions:

- NRS
- Board Ops.
- Fin. Reserve
- Un. Exp. Reserve
- Insurance Reserve
- Capital Reserve
- Accumulated Interest-Depository
- Accumulated Interest-Administrative
- 2020 Excess
- 2021 Excess
- 2022 Excess
- Other Excess

Fees collected that are owing to the States. Includes fees collected from states exceeding revenue entitlements and will be used in a 2022 distribution.

Funds expended by the Board through 12/31/2021 plus administrative funds that have been collected and not yet spent.

The financial reserve established by the Board that is equal to 3 years of expenses (2021-2023) as described in the Board policy.

The financial reserve established by the Board for unusual and unexpected expenses as described in the Board policy.

The financial reserve established by the Board to establish a self-funding mechanism for Directors & Officers insurance as described in the Board policy.

The financial reserve established by the Board for potential capital expenditures as described in the Board policy.

Interest income earned on excess fees deposits collected from industry.

Interest income earned on administrative reserves created by the UCR Board.

Excess fees deposited for the 2020 registration year. They will be used to meet state entitlements when reduced fees result in lower program revenues.

Excess fees deposited for the 2021 registration year. They will be used to meet state entitlements when reduced fees result in lower program revenues.

Excess fees deposited for the 2022 registration year. They will be used to meet state entitlements when reduced fees result in lower program revenues.

Residual monies from participating states due to closing out old years (2010-2016).

UNIFIED CARRIER REGISTRATION PLAN
BANK BALANCE SUMMARY REPORT
April 30, 2022

Month	Accumulated Interest											
	Total	NRS	Board Ops	Fin. Reserve	Un. Exp. Reserve	Insurance Reserve	Capital Reserve	Depository	Administrative	2021 Excess	2022 Excess	Other Excess
Apr-22												
BND												
Account Title												
CD (Mat 8/05/22) (50 bps)	2,673,256.87			2,650,000.00					23,256.87			
CD (Mat 11/12/22) (20 bps)	2,652,193.33			2,650,000.00					2,193.33			
Treasury Bill (Mat 1/26/23)	2,650,000.00			2,650,000.00								
Treasury Note (Mat 3/15/23)	21,148,575.62									21,148,575.62		
Checking	53,187.51							1,763.12		51,424.38		0.01
2020 Savings (7 bps)	5,183.22							5,183.22				
2021 Savings (7 bps)	2,143,528.34							3,053.47		2,140,474.87		
2022 Savings (7 bps)	18,260,950.40	2,933,590.00						1,052.40			15,325,308.00	
Holding (7 bps)	330,423.81						0.00	166,747.18	7,490.63	59.00	2,940.00	153,187.00
SunTrust												
Account												
Checking	234,624.06		234,624.06									
State Funding	2,791,337.57	59,547.00	16,820.23				0.00	66,901.34		309,741.00	2,338,328.00	
Daily Liquidity (DLA) (25 bps)	11,623,249.21		2,851,526.71	4,550,000.00	1,750,000.00	2,000,000.00	463,395.00		8,327.50			
GRAND TOTAL	64,566,509.94	2,993,137.00	3,102,971.00	12,500,000.00	1,750,000.00	2,000,000.00	463,395.00	244,700.73	41,268.33	23,650,274.87	17,667,576.00	153,187.01
Administrative Expenses - YTD April 2022			897,029.00									
Administrative Allowance			4,000,000.00									

COMMENTS:

Definitions:

NRS:
Board Ops:
Fin. Reserve:
Un. Exp. Reserve:
Insurance Reserve:
Capital Reserve:
Accumulated Interest-Depository:
Accumulated Interest-Administrative:
2021 Excess:
2022 Excess:
Other Excess:

Fees collected that are owing to the States. Includes fees collected from states exceeding revenue entitlements and will be used in a 2022 distribution.
Funds expended by the Board through 4/30/2022 plus administrative funds that have been collected and not yet spent.
The financial reserve established by the Board that is equal to 3 years of expenses (2022-2024) as described in the Board policy.
The financial reserve established by the Board for unusual and unexpected expenses as described in the Board policy.
The financial reserve established by the Board to establish a self-funding mechanism for Directors & Officers Insurance as described in the Board policy.
The financial reserve established by the Board for potential capital expenditures as described in the Board policy.
Interest income earned on excess fees deposits collected from industry.
Interest income earned on administrative reserves created by the UCR Board.
Excess fees deposited for the 2021 registration year. They will be used to meet state entitlements when reduced fees result in lower program revenues.
Excess fees deposited for the 2022 registration year. They will be used to meet state entitlements when reduced fees result in lower program revenues.
Residual monies from participating states due to closing out old years (2010-2018).