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MEMORANDUM

TO: Patricia Nelson

FROM: Michael F. Morrone

DATE: March 25, 2009

RE: Analysis of Three Federal Statutes That Have Impacted NLA Member Operations

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I. BACKGROUND AND EXECUTIVE SUMMARY

In an effort to provide clarification to NLA's membership and respond to questions that have arisen recently, this memorandum will address a change in federal legislation adopted in mid-2008 that has impacted certain members, albeit a relatively small percentage, of NLA's constituents. As a result of that statutory modification altering the definition of a "motor carrier," providers of interstate pre-arranged chauffeured ground transportation for compensation must, regardless of the seating capacity of the motor vehicles they utilize: (1) hold interstate carrier operating authority and (2) be insured for a minimum of $1.5 million of bodily injury and property damage liability. While those regulatory obligations are actually identical to the federal requirements that had existed prior to August of 2005, they constitute a change from the law that applied for the period August 10, 2005 through June 6, 2008. Indeed, between those two dates, because of a different federal statutory definition of "motor carrier" that then applied, providers of interstate, compensated pre-arranged chauffeured ground transportation, who solely operated town cars, were exempt from those federal operating authority and insurance mandates. For most of NLA's members, however, the above-noted federal statutes passed in 2005 and 2008 did not alter the federal obligations that pre-dated the 2005 legislation requiring operators, regardless of vehicle capacity, to hold carrier operating authority and possess a minimum of $1.5 million of BIPD coverage. That is simply because the overwhelming majority of NLA's members utilize interstate mixed fleets comprised of both town cars, on the one hand, and, on the other, larger equipment meeting the Federal Motor Carrier Safety Administration's definition of a "commercial motor vehicle," i.e., equipment "designed or used to transport more than eight passengers (including the driver) for compensation." Interstate operation of commercial motor vehicles has always necessitated that the service provider possess carrier operating authority and maintain the above-noted requisite level of insurance coverage.

In light of the foregoing, the analysis below will address in more definitive detail the regulatory impact of the following three federal statutes and their implications for the pre-arranged chauffeured ground transportation industry:

(1) The Interstate Commerce Commission Termination Act of 1995 (Termination Act);

(2) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed in 2005; and

(3) The SAFETEA-LU Technical Corrections Act of 2008 (Technical Corrections Act).

II. TERMINATION ACT

A. Operating Authority

With respect to interstate for-hire motor transportation of passengers, the Termination Act had bestowed jurisdiction on the U.S. Department of Transportation (DOT) over "motor carriers." Section 13102 (12) of the Termination Act had defined a "motor carrier" as "a person providing motor vehicle transportation for compensation." (Emphasis added.) Therefore, under the Termination Act, regardless of the seating capacity of the vehicle utilized, one engaged in pre-arranged ground transportation of passengers in interstate commerce was obligated to hold interstate operating authority from the DOT or from the former Interstate Commerce Commission. By contrast, the Termination Act exempted from DOT jurisdiction "a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places."[1] Indeed, that exemption for taxicab service had existed for decades.

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[1] In 2002, 49 U.S.C. § 13102 was amended to include the following definition of "taxicab service:"

The term "taxicab service" means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that—

(A) is licensed as a taxicab by a State or local jurisdiction; or

(B) is offered by a person that—

B. Insurance

The Termination Act and the regulations DOT adopted thereunder also set forth the insurance requirements to which "motor carriers" would be held. Specifically, if the motor carrier operated in interstate commerce only vehicles with a seating capacity of 16 passengers or more, the motor carrier was obligated to maintain a minimum of $5,000,000 of bodily injury and property damage (BIPD) liability insurance coverage. If the carrier solely operated vehicles with a seating capacity of 15 passengers or less, the motor carrier was required to maintain a minimum of $1,500,000 of BIPD coverage. In the event that the motor carrier operated a mixed fleet of equipment, i.e., some vehicles with a capacity of 16 or more passengers and other vehicles with a capacity of less than 16 passengers, the DOT would have required the entire fleet to be insured at the $5,000,000 BIPD level of coverage. By comparison, operators of taxicab service were not subject to these DOT insurance requirements.

C. DOT Safety Jurisdiction

As noted above, the seating capacity of the vehicle relied upon by a pre-arranged chauffeured ground transportation service provider to carry passengers on a compensated basis interstate had no bearing under the Termination Act on that provider's obligation to hold interstate operating authority. However, the vehicle's seating capacity would determine whether the carrier and the driver it utilized to operate that vehicle would be subject to the DOT's Federal Motor Carrier Safety Regulations (FMCSR) set forth at 49 C.F.R. Parts 390-397. The FMCSR cover among other topics such matters as maintenance of driver qualification files, driver hours of service restrictions and logging obligations, equipment inspection, repair and periodic maintenance standards, and retention of an accident register. Specifically, the FMCSR apply to persons operating a "commercial motor vehicle" which Section 390.5 of the FMCSR defines in relevant part as one "designed or used to transport more than 8 passengers (including the driver) for compensation."

Additionally, if the vehicle utilized for this purpose were designed or used to transport 16 or more passengers or, regardless of its seating capacity, had a gross vehicle weight rating of 26,001 pounds or more, then not only would the Part 390-397 provisions of the FMCSR have

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(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

(ii) does not primarily provide transportation to or from airports.

applied to the carrier and its driver, but so too would the commercial driver license (CDL) requirements of Part 383 and the controlled substance and alcohol testing regulations of Part 382.

III. SAFETEA-LU

A. Operating Authority

SAFETEA-LU took effect on August 10, 2005. In amending the Termination Act, SAFETEA-LU changed the definition of a "motor carrier." Henceforth, under 49 U.S.C. 13102(14) a "motor carrier" would be defined as "a person providing commercial motor vehicle transportation for compensation" (Emphasis added.) Thus, that definitional modification exempted from the obligation to hold interstate motor carrier operating authority any provider of pre-arranged chauffeured ground transportation service who was not utilizing commercial motor vehicles to transport passengers in interstate commerce. In that regard, 49 U.S.C. § 31132 defined a "commercial motor vehicle" in relevant part in the following manner:

> "[A] self-propelled vehicle used on the highways in interstate commerce to transport passengers . . ., if the vehicle—"
>
> (A) has a gross vehicle weight rating . . . of at least 10,001 pounds . . .; [or]
>
> (B) is designed or used to transport more than 8 passengers (including the driver) for compensation . . . .

In light of this definitional change from what had been the case under the Termination Act, under SAFETEA-LU carriers who, for example, would only operate town cars (i.e., vehicles whose capacity would not accommodate more than 8 passengers, including the driver) or vehicles which, irrespective of their seating capacity, did not equal or exceed 10,001 pounds gross vehicle weight rating would not be required to hold an interstate operating license from the DOT as a prerequisite to transporting passengers for compensation in interstate commerce. This was so because those vehicles did not constitute "commercial motor vehicles." Thus, the DOT lacked jurisdiction over non-commercial motor vehicles.

On the other hand, if the carrier would be operating in interstate commerce a mixed fleet of both town cars on the one hand, and on the other, vehicles that in fact met the above definition of commercial motor vehicles, the DOT's licensing requirements would still very much continue to apply to that carrier.

B. Insurance

Under SAFETEA-LU, if the equipment the carrier operated in interstate commerce did not meet the definition of a commercial motor vehicle, the DOT's BIPD insurance requirements under Part 387 of the regulations would not apply to that carrier.

C. DOT Safety Jurisdiction

Under SAFETEA-LU, if the carrier were operating in interstate commerce any piece of equipment meeting the Section 31132 definition of a commercial motor vehicle, then the FMCSR would apply to the driver of that equipment, the carrier who utilized that driver, and to that vehicle.

IV. TECHNICAL CORRECTIONS ACT

A. Operating Authority

The Technical Corrections Act, which took effect on June 6, 2008, amended SAFETEA-LU by restoring the definition of a motor carrier previously found in the Termination Act. Consequently, as matters currently stand, a "motor carrier" is once again defined as "a person providing motor vehicle transportation for compensation." Since that definition in no way invokes reference to the vehicle's seating capacity or weight, the mere for-hire transportation in interstate commerce of a passenger in a vehicle of any size or weight by a pre-arranged ground transportation service provider will necessitate that such person hold interstate motor carrier operating authority. Notwithstanding that fact, the statute continues to exempt operators of taxicab service, as defined in 49 U.S.C. § 13102(22), from such operating authority requirement.

B. Insurance

The Technical Corrections Act not only reestablishes the definition of a "motor carrier" as previously set forth in the Termination Act, but also applies to such redefined motor carrier the same BIPD insurance requirements that were mandated under the Termination Act. Accordingly, pre-arranged ground transportation service providers (as distinguished from operators of taxicab service) today must meet the BIPD insurance requirements of Part 387 of the FMCSR even if they are not operating what are defined as commercial motor vehicles (i.e., vehicles designed or used to transport more than eight passengers (including the driver) for compensation).

C. DOT Safety Jurisdiction

The Technical Corrections Act has not altered the universe of carriers who must comply with the FMCSR. Hence, as matters currently stand, only persons who are operating commercial motor vehicles as defined in 49 U.S.C. § 31132 must concern themselves with manifesting compliance with the FMCSR.

V. CONCLUSION

Given the foregoing legislative history, it should now be clear that companies today performing compensated pre-arranged chauffeured ground transportation of passengers in interstate commerce are from the standpoint of (1) operating authority, (2) BIPD insurance and (3) DOT safety jurisdiction treated by the DOT no differently now than they would have been prior to the August 10, 2005 effective date of SAFETEA-LU. Moreover, for the period August 10, 2005 through June 6, 2008, companies engaging in such pre-arranged ground transportation service who operated in interstate commerce mixed fleets of both commercial motor vehicles and vehicles that did not meet the definition of commercial motor vehicles would have been required to continue to satisfy the DOT operating authority, BIPD and FMCSR requirements. As the NLA Directory clearly illustrates, the overwhelming majority of NLA's members operate fleets comprised of both commercial motor vehicles and non-commercial motor vehicles.

The only parties who would have been alleviated from the need to hold operating authority and maintain DOT-prescribed levels of BIPD insurance during the period August 10, 2005 (the effective date of SAFETEA-LU) through June 6, 2008 (the effective date of the Technical Corrections Act) would have been persons solely operating non-commercial motor vehicles, i.e., town cars, in interstate commerce. Consequently, with respect to those interstate pre-arranged chauffeured ground transportation service providers who may have embarked upon operations for the first time between August 10, 2005 and June 6, 2008 and were only utilizing town cars in conducting those endeavors, passage of the Technical Corrections Act now means that those operators obtain, if they have not already done so, interstate operating authority and a minimum of $1.5 million of BIPD coverage.