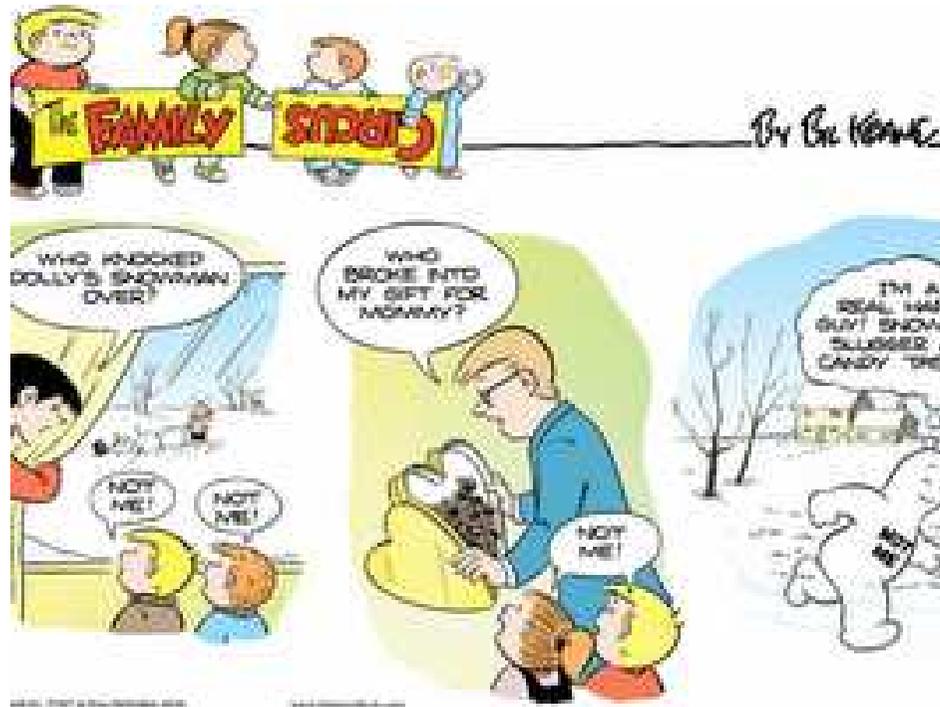


Who does UCR apply to?



"Not me."

Property Transportation Factors to Consider

- Fixed and persistent intent of the shipper
- Whether the transportation is in the stream of interstate commerce
- “Essential character” of the shipment



The Farmer

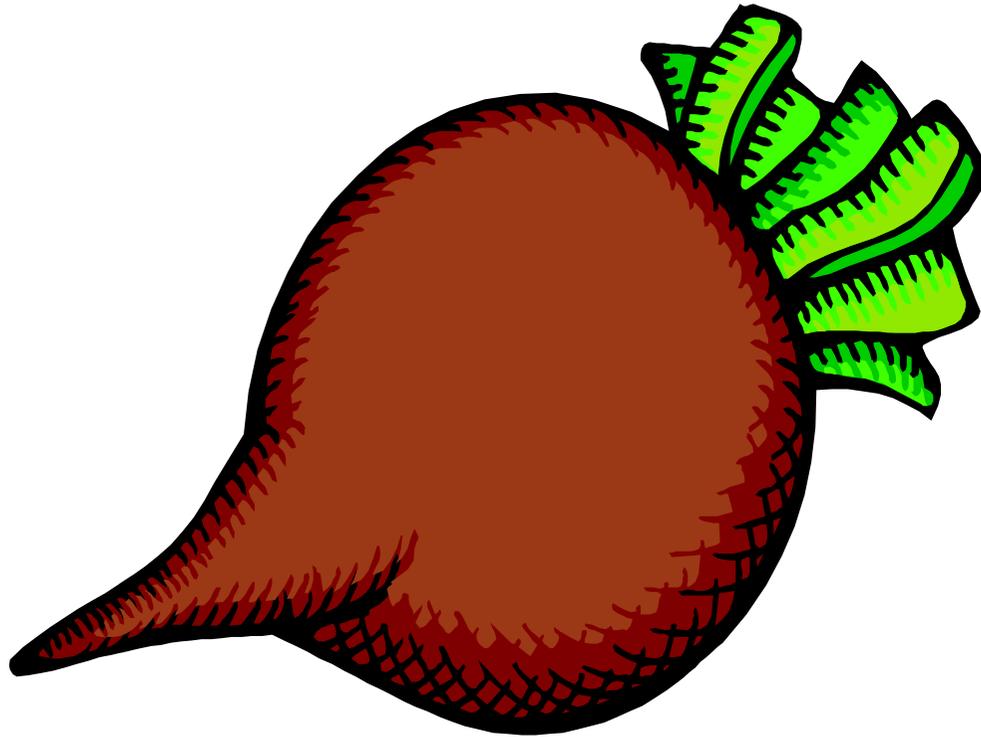
Transports his own grain in his own truck from his farm to a grain terminal where he sells the grain.

Is this interstate or intrastate commerce?



**The majority of the grain is shipped
out-of-state from the terminal.**

The farmer was transporting in
interstate commerce.



Sugar Beets

The farmer transports his own sugar beets from his field or farm storage to a sugar beet factory.



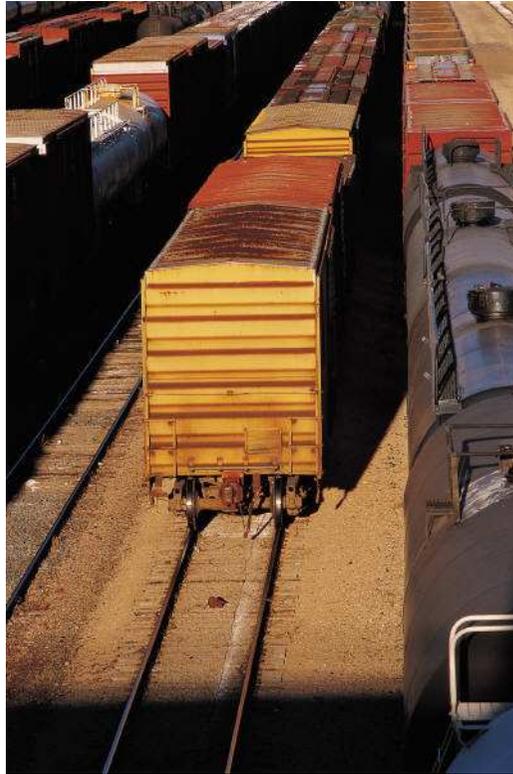
Sugar Beet Factory

Processes sugar beets to make sugar.

This changes the character of the product.

The sugar beet transportation ended at the factory. **Intrastate Commerce**

A new product – sugar – is shipped from the factory.



Sugar is transported from the sugar beet factory, across a highway, to a rail siding where it is loaded for shipment out-of-state.

Interstate Transportation

Motor Private Carriers

**Determining whether it is property
and a commercial enterprise.**



Motor Private Carrier

13102(15) – means a person, other than a motor carrier, transporting **property** by motor vehicle when–

- the transportation is as provided in section 13501 of this title;
- the person is the owner, lessee, or bailee of the property being transported; and
- the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

Commercial Motor Vehicle

Sec. 31101(1) – means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or **cargo**, if the vehicle –

- (A) has a GVWR or GVW of at least 10,001 pounds, whichever is greater;
- (B) is designed to transport more than 10 passengers including the driver; or
- (C) is used to transport haz mat requiring placarding.

The terms “cargo” and “property” are synonymous with each other.

Freight
Commodities



Cement Pump Truck

The truck is the property/cargo being transported.

Employees of a company engaged in cementing wells, which involved moving heavy equipment permanently attached to trucks sometimes over state lines, worked for a private carrier of property by motor vehicle within meaning of former 49USCS §§ 303(a)(17) and 304(a)(3)... Harshman v Well Service, Inc. (1965, WD Pa) 238 F Supp 953, 53 CCH LC P 31771, afd (1965, CA3 Pa) 355 F2d 206.

Natural gas well servicing company whose drivers carry tools and equipment in company-furnished pick-up trucks across state lines is a private carrier of property by motor vehicle within meaning of former 49 USCS § 303(a)(17). Sinclair v Beacon Gasoline Co. (1976, WD La) 447 F Supp 5, affd (1978, CA5 La) 571 F2d 978.

Is it, or isn't it,
a commercial enterprise?

FMCSR

390.3 Applicability

(f) **Exceptions.** Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

Question 21: Does the exemption in §390.3(f)(3) for the “occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise” apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?

Guidance: The exemption would apply to this kind of transportation, provided:

- (1) The underlying activities are not undertaken for profit, i.e.,
 - (a) prize money is declared as ordinary income for tax purposes, and
 - (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant;
- (2) corporate sponsorship is not involved.

Drivers must confer with their State of licensure to determine the licensing provisions to which they are subject.



County Fair Horse Show

Is this a commercial enterprise?



Draft Horse Transportation

It can cost the owner a lot of money for this hobby and still not be considered a commercial enterprise.



The Budweiser Clydesdales

Is this a commercial enterprise?

Very much so!



**This operation is a commercial operation
subject to the UCR.**



What would you do if this truck pulled into your weigh station?



Passenger Carriers

The FMCSA has held that the FMCSA, not the States, has primary jurisdiction to determine whether operations are within a federal authority. *See Fullington Trailways, LLC*

To justify intrastate operations along an interstate route the interstate portion must be **substantial** and **bona fide**.

- The ICC found that a 24% ratio of interstate to intrastate passengers is substantial thus allowing the carrier to transport passengers on an intrastate basis under its ICC authority. *See Airporter of Colorado v. ICC on remand.*
- The ICC held that 21,713 interstate passengers was substantial even though it constituted about 10% of the 218,605 intrastate passengers. *See Holland Industries, Declaratory Order.*
- The court addressed the ratio finding substantial interstate transportation was provided with over 25% of the regular route traffic consisting of through ticketing with an air carrier and common arrangement for prearranged transportation booked through third parties such as travel agents. *See Aspen Limousine Service v. Colorado Mountain Express.*

Federal preemption over state jurisdiction with regard to intrastate transportation by a carrier operating under a federal interstate authority.

- Interstate transportation must either cross state lines or must be provided on a through-ticketing or common arrangement with an air or ground carrier. *See Kimball, Funbus, Erin, O'Hare, Strip Transportation, Holland, and Stapleton Supercoach.*
- A common arrangement where the air and ground transportation are set up by a third party such as a travel agent or a reservation network. *See Charter Limousine v. Dade County Board of County Commissioners and Colorado Mountain Express v. Board of County Commissioners of Pitkin County.*
- Prearrangements made directly with the ground transportation company by persons traveling to or from out-of-state locations. *See Executive Town and Country Services v. City of Atlanta, American VIP Limousines v. Dade County Board of County Commissioners, and East West Resort Transportation, Inc. dba CME v. Binz et al (PUC).*

Additional Court Findings

- The carrier need not cross state lines to conduct interstate commerce. *See Colorado Mountain Express v. Board of County Commissioners of Pitkin County.*
- Transportation of airline crews from airports to hotel accommodations is interstate commerce. *See Pennsylvania PUC v. ICC and Port of Portland v. Carmen Bilic and Tom Bilic.*
- Transportation of train-crews is an integral part of interstate train movements and therefore is wholly in interstate commerce. *See Brown's Crew Car of Wyoming LLC v. Nevada Transportation Authority and Ignacio Garijo dba Winnemucca Cab.*



Taxi Cab Operations

**Local operations of taxicabs to and from
an airport are intrastate commerce.**

*See Airport Taxi Cab Advisory Committee v. City of
Atlanta and American VIP Limousines v. Dade County
Board of County Commissioners.*

Who Does UCR Apply To?

