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Observers have questioned whether the Unified Carrier Registration Agreement (UCRA or the program) should include an element dealing with motor carrier financial responsibility. This has been generated by statutory language contained in 49 U.S.C. §14504a, enacted as part of the Unified Carrier Registration Act (Act) by P.L. 109-59, signed into law August 10, 2005. The UCRA Board of Directors (Board), however, has chosen not to include in the program any requirement for motor carriers to file proof of or information about financial responsibility, for the following reasons:

-- The Board considers the Act's references to financial responsibility, which are neither specific nor directive in nature, to be drafting errors. This is corroborated by the inclusion in the proposed SAFETEA-LU Technical Corrections Act (H.R. 3248), which has passed the U.S. House of Representatives, of the deletion of all references in the Act to financial responsibility.

-- The UCR Act contains specific prohibitions against state requirements that motor carriers file proof of or information about financial responsibility.

-- The addition of a financial responsibility element to the UCRA would involve participating states in the implementation of large-scale, expensive new programs that the Act does not appear to contemplate, and for which the states would not be compensated. The Board does not believe that Congress intended financial responsibility to form a part of the UCRA.

Statutory Background

There are three references in the Act to financial responsibility: in §14504a(a)(8) and in 14504a(f)(1)(A)(i) and (ii). Subsection (a) of §14504a is a set of definitions of terms found in the Act. Paragraph (8) is the definition of the term "Unified Carrier Registration Agreement." It reads, in part:

> (8) ... [T]he agreement ...governing the collection and distribution of registration *and financial responsibility* information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies pursuant to this section. [italics added]

Subsection (f) of §14504a is entitled "Contents of the Unified Carrier Registration Agreement." Paragraph (a) of the subsection is "Fees." Subparagraph (A) specifies the basis of the UCRA fees, as follows:

> (A) Fees charged –
> (i) to a motor carrier, motor private carrier, or freight forwarder *in connection with the filing of proof of financial responsibility* under the UCR agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder; and

> (ii) to a broker or leasing company *in connection with such a filing* shall be equal to the smallest fee charged to a motor carrier, motor private carrier, and freight forwarder or [sic] under this paragraph. [italics added]

Statutory References Not Intended
by Congress

Now, while the Act grants general authority to the Board to issue regulations and to oversee the operation of the UCRA (*see*, §14504a(d)), it also provides a detailed framework for the Board's guidance in many areas involved in the program, such as the Board's own operations (in §14504a(d)), state participation in the program (§14504a(e)), and how the UCRA fees are to be calculated (§14504a(f)) and distributed among the states (§14504a(g) and (h)). All of these provisions are filled with specific directions on how the UCRA is to function, and what the UCRA requirements are for the participating states and for the several categories of entities that are to pay fees under the program.

Nowhere, however, does the Act give any guidance or direction to the Board on how participating states are to require and enforce any requirements concerning motor carrier financial responsibility. Nor does the language of the statute provide for any such requirements directly. All there is are the three references set out above. The Board believes that if Congress had intended the UCRA to include financial responsibility, Congress would have made its intent much plainer in the statute, rather than to rely on the language cited above, which is neither clear nor direct.

The Board believes, instead, that the references to financial responsibility represent remnants of the prior statutory language, repealed by the Act, which authorized the Single State Registration System, a program that did included an element of financial responsibility, and under which motor carriers filed such information and paid fees in connection with those filings. The Board recognizes that in construing statutory provisions it is generally preferable to assign some meaning to all of the language that appears, but the Board notes that the Act contains a number of other, undoubted drafting errors, several of which are evident in §14504a(f)(A)(ii), above. That these are in fact errors and not veiled indications of some intent on the part of Congress, is manifested by their deletion or correction in the SAFETEA-LU Technical Corrections Act, H.R. 3248, which has passed the U.S. House of Representatives and is currently held up in the U.S. Senate over other issues.

State Financial Responsibility Requirements
Prohibited by the Act

The Act includes a number of federal preemptions of state authority. Among these is the following:

> (1) To enact, impose, or enforce and requirement or standard with respect to, or levy any fee of change on, any motor carrier or motor private carrier … in connection with— …

> (B) the filing with the State of information relating to the financial responsibility of the a [sic] motor carrier or motor private carrier pursuant to sections 31138 or 31139.... [49 U.S.C. §14504a(c)(1), in part]

It is clear, therefore, that Congress intended that states be preempted from requiring regulated, for-hire interstate carriers to make any filing or pay any with respect to their federal financial responsibility. Does the language extend to other categories of carrier as well? The Board believes that the language cited extends to exempt, for-hire interstate carriers and to interstate motor private carriers as well.

Although interstate exempt carriers have not had federal financial responsibility requirements, the Act itself changes this. Section 4303(b) of the Act provides that within a year of the effective date of the provision, that is, by August 10, 2006, interstate exempt motor carriers are to file proof of their financial responsibility with the U.S. Secretary of Transportation. The Department of Transportation has as yet not implemented this provision, but its intent is no less clear for that: Exempt carriers are covered under the preemption cited above.

The situation with respect to interstate private carriers is less clear cut. Private carriers have no federal financial responsibility requirements currently, either, and the Act does not change that. However, another provision of P.L. 109-59, §4120, gives the Department of Transportation the discretion to require such carriers to maintain financial responsibility with the Department, just as for-hire carriers are required to do. The Board believes that this circumstance gives rise to a presumption that Congress intended to preempt this entire area from state control – with respect, that is, to private as well as for-hire carriers.

Congress' plans with respect to the Unified Carrier Registration System (URS), also contained in the Act, lends additional credence to the Board's position. URS is explicitly intended to incorporate large elements of current and any future federal financial responsibility requirements for motor carriers, and was also intended by Congress to be implemented by the Department of Transportation by August 10, 2006, before, that is, the implementation of the UCRA by the states. (*See*, 49 U.S.C. §13908, as amended by the Act.)

<u>Adding Financial Responsibility to UCRA</u>
<u>Difficult and Expensive for States</u>

The Board believes that Congress cannot have intended the indirect references to financial responsibility in the Act to require the UCRA to include a financial responsibility element, because such a requirement would conflict with Congress' overall intent in passing the Act, which is much more clearly evident from the language in the statute. Congress clearly intended in the Act to repeal the Single State Registration System and to replace through the UCRA of state revenues lost by virtue of that repeal and of the establishment of the various preemptions on state powers referred to above. At the same time, Congress required that state revenues derived from UCRA (or their

equivalent) be dedicated by the states to highway safety and enforcement. Congress evidently took pains in the Act to streamline UCRA administration for the states, presumably so as not to consume the state replacement revenues with additional administrative requirements. Congress clearly intended to render industry compliance with UCRA inexpensive and unburdensome as well.

To require motor carriers to file information on financial responsibility as a part of the UCRA would conflict not only with the express state preemptions that Congress included in the Act, but it would conflict with Congress' overall intent with respect to the program. Implementation and enforcement of any requirement for the filing of financial responsibility information by interstate carriers, even if only by private carriers, would be difficult and expensive for the states, and eat up UCRA revenues that Congress clearly intended by used for other purposes.

Few if any states have financial responsibility requirements for interstate private carriers currently; these would have to be enacted and implemented – and as there is no federal standard to serve as a model with respect to such carriers, state enactments would inevitably vary, perhaps significantly. Enforcement of the requirement would also be problematic for the states, since private carriers are currently not subject to financial responsibility requirements, and there exists no national financial responsibility data base for these carriers, such as exists for regulated for-hire carriers at the U.S. Department of Transportation. Such a data base would have to be constructed, presumably by the states participating in the UCRA, if the financial responsibility requirements imagined by some for the UCRA were to have any meaning at all. Without state sharing of carrier information on financial responsibility, there could be no reasonable enforcement of the filing requirements themselves.

Conclusion

It is these considerations, then, that lead the Board to believe that Congress did not intend, by the indirect and unclear references to financial responsibility in the Act, that the UCRA should include any requirements for the filing by motor carriers of information concerning financial responsibility. It is unreasonable to believe that Congress would expect states participating in the UCRA to develop, implement, and manage a national program in this area without explicit direction, detailed guidance, and financial compensation from the federal government. None of that is provided by the Act, which on the contrary contains specific and implied preemptions against state involvement in the financial responsibility of any interstate motor carriers. It is clear to the Board that Congress did not intend the UCRA to include any element of motor carrier financial responsibility.