Discussion of Entities Subject to Fees Under the UCRA Program

In determining the level and structure of the fees to recommend to the Secretary under the Unified Carrier Registration Agreement for the year 2007, the UCRA Board has included, among others, the following two specific categories of entity among those that are subject to the fees; that is, first, motor carriers, as defined in the Act, which, although operating across state lines, are not based in a State that is participating in the UCRA; and, second, motor carriers as defined in the Act which, although operating in interstate commerce under federal law by virtue of their activities, do not operate across state lines. The Board included these categories because of the general intent of the Act, because of specific provisions of the Act, and because of the manifest effect on the UCRA program if these categories were not included.

The general intent of the Unified Carrier Registration Act is to repeal the Single State Registration System and to provide the States with a means of replacing the revenue from SSRS and certain related programs whose continuation by States the Act prohibits. The Act was a product, in the first instance, of long negotiation between the States and the motor carrier industry. Throughout, the intention of those involved in setting and drafting the terms of the proposed legislation was summed up in the slogan, "A truck is a truck." In other words, whereas SSRS had generated revenue for the states only from interstate regulated for-hire carriers, the new system would generate replacement revenue from all motor carrier entities involved in interstate commerce. The tax base, in other words, was to be broadened as far as possible, and the revenues were to be designated for highway safety and enforcement purposes, as SSRS revenues never specifically had been. It was to this end that the UCRA program specifically includes interstate exempt carriers, interstate private carriers, carriers based in foreign countries, and even those entities such as brokers, freight forwarders, and truck leasing companies, that operate no trucks but are involved in operations that affect the safety of the highways.

Thus the intention of States and industry was not in any way to narrow the scope of those entities that were to be subject to UCRA fees, but rather to broaden it. To exclude carriers not based in a participating State, however, would very seriously limit the numbers of carriers paying these fees. Congress must have anticipated that some states might choose not to participate in the program, for it was Congress that introduced into the Act the option for a State not to participate in it. As originally submitted and introduced into Congress, the Act contained no such choice on the part of a State: All States were required to participate. And there is nothing in the words of the Act to indicate that Congress itself intended to restrict the reach of the UCRA program by excluding categories of interstate regulated for-hire carrier.

The language of the Act discloses Congress' intent by the very broad definition of the term "motor carrier" found in 49 USC 14504a(a)(5). The term is to include entities that have been subject to no other federal transportation program. It is significant that the UCRA is a program designed specifically to enable States to recover revenues from a program that Congress was repealing in the same Act. Congress would hardly have in

one provision provided for an extraordinarily broad base for the UCRA fees and in another significantly narrowed that same base.

But Congress did no such thing. There is not in fact any provision that declares that either of the two categories described above are to be excused from paying fees to the States under the UCRA program. All there is in this regard are the very wide definition of "motor carrier," already cited; and the provision (49 USC 14504a(f)(4)) that carriers, as defined, and the other included entities, are to pay fees to their "base-State," another defined term.

To be sure, Congress was not as clear in this last-named definition (49 USC 14504a(a)(2)) as it might have been. But it cannot be assumed because Congress chose to use the word "may" in connection with a carrier's choice of a base-State in the event the State of its principal place of business is not participating in the UCRA, that such carriers were to be altogether excluded from the program. Rather, along the lines of the International Registration Agreement and the International Registration Plan, Congress chose to grant the industry a modicum of flexibility in the matter of a base-State, at least under certain circumstances. The use of the word "may," that is, only indicates that it is the carrier's choice to which one of potentially several base-States it may choose to pay its fees under UCRA, not at all that it may choose not to pay any fees at all.

With respect to interstate motor carriers (as defined) that operate solely within a single State, the Act contains no provisions that would require their exclusion from the UCRA program, or otherwise distinguish them from carriers that operate across state lines. Interstate carriers operating wholly within one state have been subject to SSRS; Congress' intent is clearly that these carriers should remain subject to fees, now under UCRA.

Finally, the exclusion of the two described categories of entities from the UCRA program will lead to some striking consequences, which Congress cannot have intended. First, there is no question that carriers and other entities based in foreign countries are to be included under the program, if in other respects they resemble the US-based entities that are to pay fees. If US entities based in non-participating States were excluded, however, Canadian and Mexican carriers would be subject to the UCRA fees and some US-based carriers would not be – a potential violation of the North American Free Trade Agreement. Second, the exclusion of the two categories described would appear to make enforcement of the UCRA program much more difficult for states. Without a UCRA credential in or on a commercial motor vehicle (which the Act specifically prohibits a State from requiring), enforcement officials are evidently obliged to rely on roadside checks of a carrier's payment status through the DOT's Motor Carrier Management Information System. This is apt to be difficult enough when all carriers, as defined, are expected to have paid fees; when the carrier population must be sorted at roadside by enforcement officials according to which state a carrier may have its principal place of business, the job will likely become wholly unmanageable. Third, the already laborious job for the Board of determining the appropriate level of UCRA fees to replace State revenues will become much more difficult and uncertain when the Board is required to

estimate carrier populations by state, and exclude those entities based in non-participating States. Finally, the exclusion of the described categories will inevitably have the effect of inducing states to drop out of the program, as their based carriers lobby for what will effectively be tax exemption. This will tend to starve the remaining states of the highway safety revenues that Congress clearly intended for them to derive form the UCRA.