The Unified Carrier Registration Act of 2005
Questions & Answers: Informal Guidance for Interested Parties

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What is the law that governs the Unified Carrier Registration Agreement?

The Unified Carrier Registration Agreement ("UCRA"), is established by federal law, in the Unified Carrier Registration Act of 2005, which is part of the federal highway reauthorization bill known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users ("SAFETEA-LU") (Public Law 109-59, enacted August 10, 2005). UCRA is treated in sections 4302 through 4308 of SAFETEA-LU. In particular, the structure of UCRA is set forth in SAFETEA-LU section 4305, which enacts a new section of the federal code 49 U.S.C. section 14504a.

What entities are subject to the UCRA fees?

Only regulated for-hire motor carriers have been covered by the Single State Registration System ("SSRS"). UCRA, on the other hand, requires all motor carriers required to register with the United States Department of Transportation ("USDOT"), including private, for-hire, and exempt carriers, as well as brokers, freight forwarders, and leasing companies to pay fees.

What entities are not subject to the UCRA fees?

Purely intrastate motor carriers are not subject to UCRA per se, unless a state that participates in UCRA elects to extend the requirements of UCRA to its intrastate carrier population. In general, apart from entities that receive a USDOT number solely under the PRISM Program, and intrastate carriers of hazardous materials, all carriers that have a USDOT number are under the UCRA.

Are carriers based in Canada and Mexico subject to the UCRA?

Yes, if carriers, freight forwarders, leasing companies, and brokers based in Canada or Mexico operate in interstate or international commerce in the United States, they are subject to the UCRA.

What is the "transition termination date" mentioned in SAFETEA-LU §4303(c)?

The Unified Carrier Registration Act deals with a number of subjects in addition to the UCRA. Among these are the final repeal of a remnant of federal economic regulation of motor carriers, that is, the distinction between interstate common and contract carriers. Section 4303 eliminates this distinction on January 1, 2007. *This provision has nothing at all to do with the UCRA.*

What is the relationship between the Unified Carrier Registration System ("UCRS") established under SAFETEA-LU §4304 and the UCRA?

Despite their similar names, UCRS and UCRA have little to do with one another, and the timetables for their implementation are not dependent upon one another. In addition to creation of the UCRA, the Unified Motor Carrier Act of SAFETEA-LU addresses the consolidation of a number of the currently separate motor carrier databases maintained by the Federal Motor Carrier Safety Administration ("FMCSA") into a single on-line system to be known as the UCRS. The UCRS, which under SAFETEA-LU is to be established during 2006, but may in fact require more time to complete, is a federal computer system of motor carrier data. The UCRA is a base-state system administered by federal and state governments and by the motor carrier industry for the collection of fees levied on motor carriers and related entities. It is anticipated by some that future state enforcement of the UCRA may be accomplished by accessing carrier data stored in the UCRS, but the mechanism for doing this is not yet established, and its precise nature remains unclear at this time.

Is there any relationship between the UCRS fees and the fees under UCRA?

No. SAFETEA-LU section 4304 imposes certain fees with respect to the UCRS – on motor carriers first applying for federal authority, for example, and on some third parties accessing data in the system. Their only purpose is to provide funds to maintain the URS. These fees are collected by FMCSA and are federal monies; *they have nothing at all to do with the UCRA fees.*

What happens to the SSRS program under the new legislation?

Under SAFETEA-LU, the SSRS program ends on January 1, 2007. SSRS was authorized and imposed under federal law – 49 U.S.C. section 14504. SAFETEA-LU section 4305 repeals 49 U.S.C. section 14504 effective January 1, 2007, and with it the SSRS program. (Various state interests have lobbied Congress for an extension of the repeal of SSRS for an additional year, but Congress has so far not passed the legislation necessary for this.)

Can a state that has participated in SSRS continue to collect fees for 2006 until the end of December 2006?

Yes. Under the federal law, it appears that a state that has participated in SSRS may continue to collect the SSRS fees from motor carriers which are due for 2006 operations through the end of calendar 2006.

Can a state collect SSRS fees for 2007 before the beginning of 2007?

No. Although SSRS fees are commonly collected prior to the beginning of the year to which they pertain, it appears that under SAFETEA-LU states may not collect fees for 2007 either before or after the beginning of that year (barring an extension of the repeal of SSRS, which will require federal legislation).

Does this depend on whether the UCRA is ready in January 2007 (or soon after)?

No. SSRS is repealed under federal law as of January 1, 2007, whether or not the UCRA program is ready on that date.

Does the UCRA affect a state's registration of interstate exempt carrier operations?

Yes. The UCRA is designed to replace the revenue that states have derived from SSRS and a number of other, related programs, including the state registration of interstate exempt motor carriers. Like the prohibition in the federal statute on states continuing to impose SSRS fees, the law prohibits a state from continuing to register or impose fees on exempt carriers under any program other than the UCRA.

If federal legislation is passed to extend the SSRS program, will it also extend state programs for the registration of exempt carriers and for the renewal of the intrastate authority held by interstate carriers?

Congress is considering legislation that would extend the repeal of the SSRS program by a year, to January 1, 2008. The current language of the extension proposal does not extend state programs for exempt carriers or those that require the annual renewal of the intrastate operating authority held by an interstate carrier.

What are the UCRA fees based on?

For motor carriers, the UCRA fees are based only on the total number of commercial motor vehicles operated. The fees for brokers, freight forwarders (those, that is, that do not operate motor vehicles – the fees of those that do are based on fleet size), and leasing companies are levied at the same rate as that which applies to the smallest motor carriers. UCRA fees depend not at all on the extent of a carrier's operations, only on the fact that it is engaged to some extent in interstate commerce. A carrier may, for example, have operations in just a few states, none of which participate in UCRA. Its fees will be the same as a carrier that operates the same number of commercial motor vehicles but whose operations extend to all participating states. Neither will it matter under UCRA which state is acting as a carrier's base state – the level of fees for a fleet of a given size will stay the same.

How do the fees under the UCRA differ from those that have been imposed under SSRS?

SSRS fees are per-vehicle fees levied on every interstate vehicle of an interstate regulated for-hire motor carrier. UCRA fees, on the other hand, will be levied on motor carriers on the basis of the total number of commercial motor vehicles they operate rather than on a per-vehicle basis. This represents a very significant change from SSRS. The fees paid by a carrier under SSRS have depended on the extent of the carrier's interstate operations and on the degree of reciprocity it enjoyed by virtue of its base state. In general, the more SSRS states the vehicles of a regulated carrier traveled in, the more it paid under SSRS. If the carrier did not have interstate operations in any SSRS states, it paid no SSRS fees.

What vehicles are considered commercial motor vehicles for purposes of the UCRA fees?

The number of commercial motor vehicles for purposes of determining a carrier's UCRA fees is the number of commercial motor vehicles the carrier reported in the most recent Form MCS-150 it filed with FMCSA or the total number of commercial motor vehicles it owned or operated under long-term lease for the twelve-months ending on June 30 of the year ending immediately before the beginning of the UCRA registration year for which the fees are being determined. A commercial motor vehicle is one that is operated in commerce and has a gross vehicle weight or gross vehicle weight rating of at least 10,001 pounds or, in the case of a passenger vehicle, is one built to carry more than 10 persons, including the driver. It also includes a vehicle that transports hazardous materials in a quantity that requires placarding. It does not include, for this purpose, a vehicle that operates wholly intrastate.

May a carrier add other vehicles for UCRA fee purposes if the carrier wants to?

Yes. A carrier may include in the number of commercial motor vehicles for UCRA fee purposes its commercial motor vehicles that operate wholly intrastate. A carrier may also choose to include its vehicles, both interstate and intrastate, that weigh 10,000 pounds or less. A carrier might wish to add these categories of vehicles because including them in the calculation of its UCRA fees makes these vehicles subject to the vehicle-credential restrictions of SAFETEA-LU.

What will entities subject to fees under the UCRA program have to do to comply?

Details of the UCRA program are being developed by the UCRA Board of Directors ("UCRA Board"). It seems likely at this point, however, that a motor carrier or another entity covered by the UCRA will be required to register annually for the UCRA and pay its fees at the same time.

Will a motor carrier subject to the UCRA fees be required to file a supplemental report and fees if the size of its fleet increases during the year?

No. UCRA fees will be imposed through a graduated structure of rates according to the number of commercial motor vehicles operated by a motor carrier during the preceding year. Changes during the fee year in the number of vehicles operated will not be reflected until the following year and the carrier will not need to report them currently.

What is a carrier's base state under UCRA?

Like SSRS, the UCRA is a base-state system, under which a carrier or other entity subject to the UCRA fees pays these through its base state on behalf of all the participating states. As under SSRS, a carrier (or other entity's) base state is the participating state in which it maintains its principal place of business. A carrier whose principal place of business is not in a participating state or is outside the United States may choose as its base a participating state in which it has an office or operating facility.

The UCRA law prohibits states from doing certain things and imposing certain fees on interstate carriers. What are these?

Section 4305 of SAFETEA-LU prohibits a state from requiring an interstate carrier, for-hire or private, to register with it the carrier's interstate operations, to file information concerning the carrier's federally required insurance, to file the name of the carrier's federally required agent for service of process, or to renew with it the carrier's intrastate authority or insurance filings or any other filings required of an intrastate carrier, except with respect to intrastate operations whose regulation has not been federally preempted (such as nonconsensual towing and the transportation of household goods, for example). SAFETEA-LU does not affect a state's regulation of intrastate carriers that do not hold interstate operating authority.

Under the UCRA, may a state continue to impose a requirement – and a fee – on an interstate carrier when it first obtains intrastate operating authority?

Yes. The new law draws a distinction between requirements (including the requirement to pay a fee) a state may impose on an interstate motor carrier when it *initially* applies for intrastate operating authority, and those requirements which pertain to the *renewal* of the intrastate authority by an interstate carrier. A state may continue to impose the first set of requirements, including the fees, and may not recoup such revenues under the UCRA. And a state may *not*, under the new law, continue to impose the second set of requirements, and *may* recoup revenues it loses from the discontinuance of such a program.

Are a state's other taxes and fees affected by these provisions?

No. A state's other fees and taxes on motor carriers do not appear to be affected. In particular, the law contains a provision that specifically states that these federal provisions do not affect the rate of a fuel use tax a state may impose or the rate of its vehicle registration fees.

When are these prohibitions effective?

Most of the prohibitions appear to relate to activities and fees that are a part of the SSRS program, which is effective through the end of calendar year 2006. To the extent activities and fees are a part of SSRS, they apparently are not prohibited for a state until January 1, 2007. To the extent the prohibited activities are not a part of SSRS, a state is apparently prohibited from doing any of them as of the date SAFETEA-LU was effective, that is, August 10, 2005.

If a state doesn't elect to participate in UCRA, can it continue to collect the SSRS fees it collects now?

No. UCRA was evidently intended by Congress to replace revenues the states have derived from SSRS and certain other programs – and to provide the sole means for any state to recoup these monies. Whether or not state elects to participate in UCRA, it may not engage in any of the activities prohibited by SAFETEA-LU.

UCRA is an "agreement." What will be included in this agreement, and who will put it together?

SAFETEA-LU provides much of the framework for UCRA, the rules under which the UCRA fees will be collected and administered. To the extent that the statute fails to supply what is necessary in this regard, it appears to give authority to the USDOT and the UCRA Board to set such rules and procedures with respect to (at least) what information an entity subject to the UCRA fees will need to submit to its base state every year, how information will be transmitted from a base state to the UCRS, transmission of fees from a state to the depository, the procedures by which a taxable entity can change its base state, and how the agreement may be amended.

What is the role of the UCRA depository?

The exact role of the depository is still to be determined, but the statute appears to envision that the fees collected by a participating state under the UCRA, at least to the extent they exceed the revenue to which the state is entitled under the program for the year, are to be forwarded by the state to a "depository" for eventual distribution among other participating states. When more revenue is collected under the UCRA during a year than all of the participating states in the aggregate are entitled to, the depository is to retain the excess, which may go to satisfy state entitlements in the following year.

What happens if the aggregate of the UCRA fees collected in a given year are inadequate to fulfill the revenue entitlements of all the participating states?

SAFETEA-LU specifies that the collection of too little in UCRA fees in a year is one of the factors to be considered by the Secretary of Transportation in setting the following year's fees.

Are meetings of the UCRA Board open to the public?

Yes. Meetings of the UCRA Board and its committees are open to the public. Notice of UCRA Board meetings will commonly be published in the *Federal Register*.

What committees will the UCRA Board establish, and how will these operate?

SAFETEA-LU requires the UCRA Board to establish at least three committees, an audit committee, a dispute resolution committee, and an industry advisory committee. To date, the UCRA Board has also established a committee on fees, a committee on procedures, and a committee on systems. The statute specifies few details of the operations of the UCRA Board's committees, except that the chair of each one is to be a member of the UCRA Board and that each one is to include both government and industry representatives among its members. The exception is the industry advisory committee, whose membership is to be entirely made up of industry representatives.

How will a participating state get its UCRA revenues?

Each participating state will collect UCRA fees from the carriers based with it for the program. The statute seems to envision that a state will retain those collections until it has satisfied its UCRA revenue entitlement, after which it will transfer additional collections it makes to the UCRA depository. It is envisioned that a state that does not collect enough to satisfy its entitlement will be paid the difference by the depository from the funds transmitted to it by the states that have collected an excess.

How are the UCRA fees going to be established?

The statute requires the UCRA Board to recommend every year to the U.S. Secretary of Transportation the level of fees to be effective the following year, and requires the Secretary to actually set the fees within 90 days following the UCRA Board's recommendation. (This process may require formal notice and opportunity for public comment.) Implicitly, in order for the UCRA Board to make such a recommendation, the UCRA Board must determine which states are going to participate in UCRA in the following year, what the aggregate of these states' UCRA entitlement revenues may be (plus what amount of UCRA administrative costs are to be recouped through the fees), how many entities are subject to UCRA and how many commercial motor vehicles they operate, and what structure of fees will best serve to collect the revenue calculated to be needed.

How does a state elect to participate in UCRA?

To participate in the UCRA – that is, to collect UCRA fees – a state must signify to the USDOT its desire to do so by filing with the USDOT Secretary its plan for UCRA administration. This is a one-time filing.

What is the content of the plan a state must submit in order to participate?

SAFETEA-LU specifies that the plan filed by a state must set out which state agency will administer its UCRA program, and that this agency will have the legal authority, resources, and qualified personnel necessary to do so. In addition, the plan must show that the state will use at least as much money for motor carrier safety programs, enforcement, or for UCRA administration as the revenue it will derive from the UCRA.

Will a state need enabling legislation to participate in UCRA?

That depends on a state's own constitution and statutes. However, a state generally requires legal authority to collect any fee. Some states may have authority under their existing statutes adequate to collect UCRA fees. Others may already have enacted UCRA enabling laws.

If a state needs and does not yet have enabling legislation, may it still elect to participate?

SAFETEA-LU strongly implies that a state may file with USDOT its plan to administer the UCRA prior to obtaining legal authority actually to engage in such administration. It is possible, however, that if without additional legislation a state lacks the authority to collect UCRA fees, it might also lack the authority to elect to participate.

Can a state that did not participate in SSRS elect to participate in UCRA?

Yes.

If a state did not participate in SSRS, can it derive any revenue from UCRA?

Any state may elect to participate in the UCRA, and if it does it may derive up to $500,000 in annual revenues from UCRA fees.

Is there a deadline by which a state must elect to participate in UCRA?

Yes. SAFETEA-LU specifies that if a state is going to participate in UCRA, it must file its plan to do so with USDOT by August 10, 2008, three years following SAFETEA-LU's enactment. If a state misses that deadline, it may never participate in UCRA. As a practical matter, during the first two or three years of UCRA, the UCRA Board may, by virtue of its role in determining the UCRA fees, be obliged to set a deadline by which a state must file a plan with USDOT if it is to participate in UCRA in the following UCRA registration year.

Once it elects to participate, can a state change its mind and withdraw from the UCRA?

Yes. SAFETEA-LU specifies that a state may withdraw from UCRA participation by either withdrawing the plan it filed with USDOT or notifying the Secretary of Transportation that it intends to withdraw. If a state does this, either before or after August 10, 2008, it may not thereafter participate in UCRA.

Once UCRA fees are set, under what circumstances might they be changed?

SAFETEA-LU evidently envisions that the UCRA Board will recommend and the Secretary of Transportation set the UCRA fees anew every year for the following year. Practically speaking, this would probably be necessary if the states participating in the program have changed, if too much or too little revenue is collected under the program in a prior year, if the number of taxable entities or their fleet sizes have changed significantly, or if UCRA administrative costs have risen.

How will the administrative costs of the UCRA be paid?

SAFETEA-LU specifies that following the distribution of funds from the UCRA depository to states that did not on their own collect all the revenue to which they were entitled in a given year, there is to be a distribution to pay the administrative costs of the UCRA. This implies that when the UCRA Board recommends the level of UCRA fees it is to include in the total an amount that represents UCRA administrative expenses.

Will there be a credential for carriers under the UCRA?

No. In section 4306, SAFETEA-LU includes a general prohibition against state requirements on interstate motor carriers to display any credentials in or on a commercial motor vehicle. Although there are a number of exceptions to this general prohibition, none seems to apply to UCRA. The implication is that Congress did not intend for there to be any UCRA credential.

Under the UCRA, are there restrictions on how a state may use the revenues it derives from UCRA fees?

Yes, in effect, there are. The law requires that a state demonstrate when it files its plan of UCRA administration with the U.S. Secretary of Transportation that it will spend an amount equal to its entitlement under UCRA on motor carrier safety programs, enforcement, or the administration of the UCRA. The statute appears to draw no distinction in this regard between programs that affect intrastate motor carriers and interstate motor carriers.