

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

**IN RESPONSE TO
A NOTICE OF PETITION FOR DETERMINATION;
REQUEST FOR PUBLIC COMMENT**

[Docket No. FMCSA-2009-0271]

**Identification of Interstate Motor Vehicles:
New York City, Cook County and New Jersey Tax Identification Requirements;
Petition for Determination.**

**JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc**

December 3, 2009

BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Notice of Petition for Determination; request for comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), Docket No. FMCSA-2009-0271, [FR 74, No. 200 at 53578] (October 19, 2009) related to three petitions filed by the American Trucking Associations (“ATA”) to deny the permissibility of certain unique credentials required by the State of New Jersey, New York City, and Cook County, IL to be displayed on a commercial motor vehicle (“CMV”) operating in interstate commerce.

B. The Interest of the Owner-Operator Independent Drivers Association, Inc

The Owner Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, MO. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers and professional drivers. The more than 158,000 members of OOIDA are professional drivers and small-business men and women located in all 50 states and Canada. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.oida.com

The Association actively promotes the views of small-business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the position of small-business truckers and professional drivers on numerous committees and in various forums on the local, state, national, and international levels. Permitting the State of New Jersey, New York City, and Cook County, IL, to require any additional credentialing of a CMV not approved by the U.S. Secretary of Transportation, or his designee, would set a dangerous precedent that could effectively undermine previous congressional action to limit the burden on interstate commerce from jurisdictions requiring interstate motor carriers to comply with onerous credentialing requirements.

II. SUMMARY

This Notice of Petition for Determination; request for comments was initiated by three petitions from the ATA seeking to void unique credentialing requirements of three different jurisdictions (State of New Jersey, New York City, Cook County, IL). The three jurisdictions require certain CMV operators to display a plate, stamp or sticker indicating their compliance with a specific state, county or city code or law. OOIDA strongly opposes allowing these jurisdictions to maintain any unique credentialing scheme for a CMV engaged in interstate commerce.

Regardless of how these jurisdictions may justify their credentialing requirements, FMCSA should not permit the continued use of these credentials because they are not an example of any type of widely used credentials. Allowing the continued use of these sorts of credentials will only encourage similar behavior from other jurisdictions who could claim “some unique need for extra credentialing” thereby making it difficult for the Agency to deny requests. FMCSA would likely find itself inundated with requests from other jurisdictions who believe they too have a compelling reason to mandate some kind of unique credential and, in the end, unravel congressional intent to limit this type of burden on interstate commerce.

III. COMMENTS OF THE ASSOCIATION

A. Congressional intent to prohibit just this sort of credentialing requirement.

The trucking industry has a long history of being subjected to unique credentialing requirements by many jurisdictions – often for no other reason than enhancing revenue collections from out-of-state truckers. Multiple license plates, fuel decals and other paper forms required to be carried on-board CMVs are just a few manifestations of these past credentialing requirements. Through multiple legal challenges from the trucking industry, these requirements were often found by courts to be unconstitutional and even discriminatory. Congress understands well the inefficient, cumbersome and expensive costs to goods movement within the U.S. from these types of restraints on the trucking industry

Congress responded to these inequities by including Section 4306 in the last highway bill¹. Section 4306² specifically reads as follows:

§ 14506. Identification of vehicles

“(a) RESTRICTION ON REQUIREMENTS.- No state, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other

¹ The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 109th Congress.

² Codified at 49 U.S.C. 14506 (b) (3).

provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (as defined in section 14504a) other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.”

Congressional intent was clear in passing Section 4306. It essentially prohibited differing jurisdictions from requiring CMVs operated in interstate commerce from displaying anything but certain widely used forms of credentialing approved by the Secretary and deemed “appropriate.” Examples of appropriate and approved displays are an IRP³ base plate, IFTA⁴ fuel decal or UCR⁵ permit. The credentials required by the State of New Jersey, New York City, and Cook County, IL, are not examples of widely used forms of credentialing, nor were they apparently approved. They serve no purpose other than as a hindrance to interstate commerce and the trucking industry, and their mere existence encourages other jurisdictions to mimic these credentials if they are allowed to stand.

The fear of other jurisdictions mandating unique credentialing is not unfounded. OOIDA was aware of the California Air Resources Board (“CARB”) originally mandating, in two of their regulatory actions related to air quality, a requirement for CMVs engaged in interstate commerce to affix decals to the truck exterior. The stickers were to indicate the truck was in compliance with their particular regulations and to aid CARB personnel in enforcing their in-state regulations. OOIDA informed them of how this conflicted with federal law, and they sought a legal interpretation as to the permissibility of this credentialing requirement within their regulations. Soon after, CARB removed the credentialing requirement from their proposed regulation. One could easily imagine had CARB succeeded in mandating their credentialing requirement, other state environmental agencies would likely follow suit and require their own

³ International Registration Plan

⁴ International Fuel Tax Agreement

⁵ Unified Carrier Registration System

credentials under the guise of environmental regulation. While this effort by CARB was thwarted, it is indicative of the innumerable possibilities for unique credentials that FMCSA could easily expect from various government entities should the ATA petition be denied.

B. Appropriate displays.

Section 4306 is not a complete ban on other credentialing requirements since the Agency is allowed to determine whether a particular display is “appropriate.” Neither the statute nor the legislative history provides much direct guidance on what should be deemed “appropriate.” But the lack of an explicit definition does not mean that the term “appropriate” has *any* possible meaning. Under one of the canons of statutory interpretation, that the meaning of an ambiguous phrase or word in a statute can be determined from its legislative and statutory context, we can reasonably find that an “appropriate” display in this case means something akin to a motor vehicle license plate and other credentials listed in the exceptions under § 14506.

C. Previous FMCSA decision denying unique credential.

Many comments to the docket have referenced a previous determination by FMCSA that denied the State of Oregon its petition to continue requiring interstate motor carriers to display a weight-mile tax credential (“WMTC”). OOIDA filed comments to that docket⁶ opposing Oregon’s petition. When FMCSA denied Oregon’s petition, the letter sent by then Administrator John Hill stated as the basis for denial “...[I]n fact, one could just as easily conclude that the WMTC’s are exactly the type of display section 4306 was enacted to prohibit.” OOIDA believes FMCSA needs to be consistent in its determinations, and we see no compelling argument to justify the continuance of these requirements.

⁶ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064802bcf32>

Absent comments from the three jurisdictions defending their credentialing requirements and absent any indication that the three jurisdictions had previously complied with the law by petitioning the Agency for an exemption, OOIDA strongly supports a determination that these credentials are in fact pre-empted by federal law and are precisely the kind of credentialing requirement congress intended to stop.

IV. CONCLUSION

OOIDA strongly urges FMCSA to rule in favor of the ATA petitions that the CMV identification requirements being imposed by the State of New Jersey, New York City, and Cook County, IL are pre-empted by federal law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Johnston', written over a horizontal line.

JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc.

December 3, 2009