

**BEFORE THE
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

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

**IN RESPONSE TO A
NOTICE OF PROPOSED REGULATORY ACTION
REQUEST FOR PUBLIC COMMENT**

[CHP-R-09-15]

**Title 13, California Code of Regulations
Division 2, Chapter 6.5**

**Amend Article 1, Definitions and General Provisions, Sections 1200; Article 6.5, Carrier
Identification Numbers, Sections 1235.1 through 1235.6; and Article 8, Section 1256,
Identification**

Adopt New Section 1235.7, Leased Vehicles

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

July 20, 2009

BEFORE THE
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Department of California Highway Patrol (“CHP”) proposing to amend regulations related to the assignment of carrier identification numbers (“CA number”) and adopting consistent leasing rules for intrastate motor carriers.

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, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small business motor carriers and professional drivers. The nearly 159,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks and small truck fleets. 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.ooida.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. OOIDA has nearly 5,700 members in the State of California and the proposed amendments regarding the assignment of carrier identification numbers (a.k.a CA numbers) will affect every one of them. The proposed adoption of leasing rules for intrastate motor carriers will extend to our California members who lease their truck and driving services to motor carriers and only operate within the geographical boundary of the State of California the same protections enjoyed under the corresponding federal regulations for owner-operators operating in interstate commerce.

II. SUMMARY

California enjoys some unique distinctions; among them as part of its status in being the equivalent of the world's seventh largest economy is also being the most populous and the third largest state geographically in the U.S. As a result of those unique traits, California has a massive intrastate trucking market for which CHP has regulatory and enforcement oversight. Unfortunately, California is not dealing with any unique issues that this proposed rulemaking intends to address by amending/adding certain Sections within the California Code of Regulations ("CCR"). The issue of proper identification and accountability of motor carriers and their attempts to "mask" associated safety data is a national issue.

Insuring that violations are attributed to the proper motor carrier entity and that processes are in place to prevent them from simply shutting down and reopening under a different CA

number is identical to a well recognized problem at the national level in issuance of US DOT operating authority. The Federal Motor Carrier Safety Administration (“FMCSA”) recognizes this is a problem and refers to these “rogue” motor carriers as “chameleon carriers”. This is because of the extent ownership will go to hide their association with a previous motor carrier as they attempt to circumvent federal regulations that they’ve run afoul of. OOIDA believes that this proposed rulemaking will enhance CHP’s ability to place proper accountability on the responsible motor carrier and thereby improve highway safety within California.

This rulemaking also proposes to adopt a new Section (13 CCR §1235.7) governing leased vehicles for California intrastate motor carriers. This new Section effectively mirrors the federal regulations contained in 49 C.F.R. Part 376, Subparts A, B, and C. As noted in the *Initial Statement of Reasons* for this proposal, California based motor carriers engaged in interstate commerce are unaffected by this proposed rule since they must already be in compliance with 49 C.F.R. Part 376 if leasing vehicles.

The adoption of regulations governing the lease of vehicles not owned by a motor carrier who conducts their business only within California is long overdue. Many motor carriers and their respective associations are likely to oppose this rule as unnecessary and an interference in the marketplace with little or no associated safety benefit. It has been clearly shown in studies that there is a direct correlation between compensation and highway safety.

OOIDA strongly supports the adoption of this new regulation as it will undoubtedly aid CHP efforts to improve highway safety by placing intrastate motor carriers under the same set of regulations that govern interstate motor carriers. It can easily be said that adopting this regulation actually “levels” the playing field for all motor carriers irrespective of their operational areas.

III. COMMENTS OF THE ASSOCIATION

A. Carrier Identification Number:

OOIDA supports the amendments proposed by CHP to regulations contained in 13 CCR, Chapter 6.5, titled “Motor Carrier Safety”. Those amendments include language changes and adopting a new article 6.5, Carrier Identification Numbers; new Section 1235, Application for Carrier Identification Number; new Section 1235.2, Motor Carrier Safety Records of the Department; new Section 1235.3, Required Information and Assignment of Identification Numbers; new Section 1235.4, Identification Numbers Nontransferable; new Section 1235.5, Retention of Records by the Department, and new Section 1235.6, Reconciliation of Records.

Highway safety can only be improved when the proper party is held accountable for violations made under their authority. The assignment of unique identification numbers will allow the California Department of Motor Vehicles and the CHP to identify those carriers who are attempting to circumvent the law by addressing this issue. When a motor carrier evades their responsibility by reinventing itself as another entity to shield itself from sanctions, not only is highway safety compromised, but the entire motor carrier industry that complies with regulations are placed at a competitive disadvantage in the marketplace.

The Federal Motor Carrier Safety Administration has attempted to address this issue of being able to identify and track motor carriers through several initiatives:

- The Commercial Vehicle Information Systems and networks (CVISN)
- The Performance and Registration Information Systems Management (Prism)
- The Comprehensive Safety Analysis (CSA) 2010 initiative.

All three have a nexus to improving highway safety and the promise of more accountability. Unfortunately, all these initiatives will fail to fulfill their potential if enforcement

is lax and penalties are seen as nothing more than a “cost of doing business”. OOIDA has a significant body of knowledge involving the “flipping” of ownership, “masking” and “chameleon” behaviors of motor carriers who are especially egregious violators of the federal regulations that affect safety. Yet, even with federal court decisions of guilt and documented challenges to the issuance of new authority from OOIDA, certain motor carriers and their corrupt management are still allowed to operate with impunity by the granting of new operating authority.

It is not “rocket science” to understand that management and ownership who repeatedly fails in complying with regulations represent a grave threat to highway safety and improvements beyond the current static numbers. California has been especially hard hit in this economic decline and when it rebounds, freight traffic could increase dramatically. It is even more important now to put processes in place and have meaningful enforcement to mitigate the commensurate spike in accident rates when our highways become even more congested.

B. Leased Vehicles:

The linkage between minimal standards governing the lease of equipment/drivers and highway safety should be obvious to anyone. For example, during the past couple of years the burden of owner-operators at the ports of Los Angeles, Long Beach, and Oakland has been communicated in most California newspapers as well as nationally. In many instances, the difficulties and short-cuts port truckers take in an effort to maintain their trucks, can be attributed to the predatory practices of the motor carrier community that will not take responsibility for the vehicles they operate but instead are using the owner-operators status as an independent contractor to avoid any penalty. While financial schemes have been put in place to modernize much of California’s drayage fleet, the financial ability of owner-operators to effectively and

properly maintain their equipment – even new equipment - is compromised by a lack of minimal regulations governing their business relationships.

Highway safety is obviously negatively impacted when equipment is not properly maintained. In spite of the CHP Biennial Inspection of Terminal Program (“BIT”) many motor carriers have taken advantage of a significant flaw within the program that allows them to evade responsibility for the trucks they lease under their authority by signing a lease or “contract” for a duration of less than four months. The leasing regulations clearly state that the owner of the equipment is legally responsible for the equipment 24/7 and the four month exemption should be eliminated. When those leases or “contracts” are designed to significantly favor the motor carrier at the expense of the owner-operator, the adverse financial pressure on the owner-operator can lead to maintenance short-cuts and highway safety will be diminished. Within the CHP *Initial Statement of Reasons* justifying this proposed rulemaking is the following statement:

“...and secondly, when the overlying motor carrier did lease a vehicle, the terms of those written leases were, at best obscure, generally resulting in a small independent operators being taken advantage of by the larger, more business savvy, overlying motor carrier”.

It simply defies logic and common sense to deny any corollary between lease arrangements and highway safety. CHP is likely to be hit with a “veil of misinformation” concerning the proposed adoption of leasing regulations modeled after the federal regulations and yet the linkage to highway safety exists – simply ask any owner-operator who has had to face the daunting dilemma of choosing between a needed set of tires and making a house payment. This reality happens when a motor carrier feels little compunction to treat an owner-operator equitably and one need not look further than California ports or travel the 710 freeway to view this dynamic at work.

I.V. CONCLUSION

OOIDA strongly supports the proposed regulatory changes by CHP to improve the identification of the motor carrier responsible for the day-to-day operation for vehicles they operate or lease.

OOIDA also supports CHP adopting regulations to govern the lease of vehicles by a motor carrier who operates solely within California. In both instances, highway safety will be further enhanced by these regulatory changes.

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.