



March 4, 2011

Ms. Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

Re: Application of the American Trucking Associations for a Determination that Credential Requirements Imposed on Interstate Motor Carriers by Wyoming Are Preempted by 49 U.S. Code section 14506

Dear Administrator Ferro:

The American Trucking Associations (ATA) hereby petitions the U.S. Secretary of Transportation for a determination under 49 U.S. Code 14506 (section 14506) that the credential requirements imposed by Wyoming on interstate motor carriers under Wyoming Statutes (W.S.) section 31-18-301, and for which a penalty is prescribed by W.S. section 31-18-701, are preempted by federal law. The Wyoming requirements involve the display of credentials in or on motor vehicles operated by an interstate motor carrier that has been granted intrastate operating authority by Wyoming.

ATA, based in Arlington, Virginia, is a national federation of all types and sizes of motor carriers, as well as allied industries, individual-member councils, affiliated conferences of specialized carriers, and fifty affiliated state trucking associations, representing altogether some 37,000 motor carrier members. As the national representative of the trucking industry, ATA is vitally interested in matters affecting state and federal regulatory simplification and efficiencies.

Wyoming Law

In this petition, ATA refers particularly to W.S. sections 31-18-301 and 31-18-701. The first requires motor carriers which have been granted intrastate operating authority by Wyoming to carry proof of that authority in their vehicles, and display it on request of state officials, in particular, at the state's ports of entry. Wyoming imposes this requirement on motor carriers that have interstate operating authority granted by the U.S. Department of Transportation, as well as carriers engaged solely in intrastate commerce in Wyoming. W.S. section 31-18-701 prescribes a fine for

Good stuff.



\$750 per violation of the credential requirement. Copies of both sections are enclosed.

Federal Statute

Section 4306 of SAFETEA-LU, which was effective August 10, 2005, generally preempts state requirements of any kind for interstate motor carriers to carry or display any form of identification in or on a commercial motor vehicle. The only exceptions are those credentials required in connection with (1) the International Registration Plan, (2) the International Fuel Tax Agreement or a state highway tax not collected under IFTA, (3) a state law regarding motor vehicle license plates, "or other displays that the Secretary determines are appropriate," (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

Prior Determinations

Last year, FMCSA determined that identification requirements similar to Wyoming's and imposed in association with New Jersey's Motor Fuel Transport License, and tax schemes imposed by New York City and Cook County, Illinois, were preempted by section 14506. *See* Identification of Interstate Motor Vehicles: New York City, Cook County, and New Jersey Tax Identification Requirements; Petition for Determination, Docket No. FMCSA-2009-0271, 75 Fed. Reg. 64779 (Oct. 20, 2010).

In 2007, in finding yet another state identification requirement to be invalid under section 14506, FMCSA noted, "ensuring that the paper documents are distributed to and carried on each vehicle, and that [the] driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States." The agency further observed that "[t]he fact that enforcement could be 'more challenging' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce" and concluded that credentials involving such burdens for motor carriers, and their drivers, "are exactly the type of display Section 4306 was enacted to prohibit." *See* Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007).

Analysis

ATA submits that there is little question that the Wyoming requirements at issue here fall squarely within the scope of preemption found by the FMCSA in its prior

determinations in the Oregon, New Jersey, New York City, and Cook County matters. FMCSA's conclusion that those types of tax identification devices are just the kind of display that the preemption provision was designed to prohibit is equally true here. Indeed, Section 14506 was enacted by Congress as a part of the Unified Carrier Registration Act, which was designed in part to relieve interstate motor carriers of the burdens associated with the remnants of intrastate economic regulation as applied to such carriers. We believe that when Congress passed this section it had in mind exactly the type of requirement that Wyoming still imposes.

It is not entirely clear what Congress intended by the clause in Section 14506 quoted above that excepts from the preemption "other displays that the Secretary determines are appropriate." ATA believes, however, that the placement of this language with the narrow exception for state vehicle registration licenses plates indicates Congress meant by this language to except requirements related to state vehicle registration procedures – perhaps, for example, an exception for transponders required as an alternative or in addition to the traditional metal license plate. In any event, this obscure clause should not be held to create an exception for requirements related to intrastate operating authority such as those imposed by Wyoming. Such a determination would open the way to the imposition of a multitude of other state and local requirements on interstate motor carriers, just the sort of situation to which Congress clearly intended to put a stop.

There is some indication that Wyoming might convert its display requirement, either implicitly or explicitly, into a "voluntary" display of operating authority credentials, in order to speed "compliant" motor carriers through the state's ports of entry. ATA does not believe that such an arrangement should allow Wyoming to escape the preemption. Congress enacted Section 14506 because it had determined that credential requirements of the sorts the statute preempts are an impermissible burden on interstate commerce. Surely it cannot have been Congress' intent to allow government entities to present interstate motor carriers with such a Hobson's choice merely by inserting the word "voluntary" in requirements of the sort imposed by W.S. section 31-18-301. ATA believes that Congress meant instead to require state and local government entities to rethink all regulatory schemes for interstate carriers that depend on credentials of the kinds preempted by Section 14506.

State Has Refused to Comply

By letter dated February 14, 2011 (enclosed), ATA has expressed its concerns to Wyoming over its requirements for interstate motor carriers to display proof of Wyoming intrastate operating authority and requested the state immediately to cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. On February 22, 2011, in a telephone conversation with the

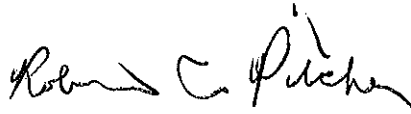
Ms. Anne Ferro
March 4, 2011
Page 4

undersigned, Colonel Jess Oyler of the Wyoming Highway Patrol emphasized that the state would continue to enforce those requirements.

Conclusion

In conclusion, ATA asks that the Secretary determine that the intrastate operating authority display requirements imposed by Wyoming on interstate motor carriers under W.S. sections 31-18-301 and 31-18-701 are preempted by Section 14506.

Sincerely,

A handwritten signature in black ink that reads "Robert C. Pitcher". The signature is written in a cursive style with a large, stylized initial "R".

Robert C. Pitcher
Vice President, State Laws

Enclosures

cc: Sheila D. Foertsch, WTA