



Richard D. Holcomb
General Counsel and Senior Vice President
for Law and Regulatory Affairs

April 25, 2008

Mr. John H. Hill
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

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

Dear Administrator Hill:

The American Trucking Associations (ATA) hereby petitions the U.S. Secretary of Transportation for a determination under Section 4306 of SAFETEA-LU (P.L. 109-59), codified at 49 U.S. Code 14506, that the identification requirements imposed by New Jersey on interstate motor carriers under N.J.S.A. 54:39-41 and 54:39-53 are preempted by federal law.

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

As the national representative of the trucking industry, ATA is vitally interested in matters affecting state and federal regulatory simplification and efficiencies.

The New Jersey Law

In this petition, ATA refers particularly to N.J.S.A. 54:39-41 and 54:39-53, which require motor carriers hauling motor fuel to display on their commercial motor vehicles engaged in such hauling a state Motor Fuel Transport License Plate and an annual Transport License Certificate (a license plate decal). Copies

Good stuff.



of these provisions are enclosed. The state's requirements apply to interstate motor carriers as well as to those involved in purely intrastate commerce.

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, (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 FMCSA Determination

This provision of SAFETEA-LU appears clearly to preempt the identification credential requirements associated with the New Jersey statutes cited above. The Federal Motor Carrier Safety Administration (FMCSA) has already determined that a similar identification requirement imposed in association with the Oregon weight-distance tax system was preempted. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007).

In finding the Oregon cab-card credential preempted, FMCSA noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that 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 tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit." Similar considerations apply in the analysis of the New Jersey requirements at issue.

Analysis

ATA submits that there is little question that the license plate and plate decal requirements which New Jersey imposes on fuel haulers fall squarely within the scope of preemption found by the FMCSA in the Oregon matter. Like the Oregon cab card, the New Jersey provisions are simply credentialing aids to tax regulatory enforcement and the burden they impose on motor carriers outweighs their value as enforcement tools. FMCSA's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

It is not entirely clear what Congress intended by the clause in Section 4306 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

Letter to Mr. John H. Hill
April 25, 2008
Page 3

create an exception for such local tax-related requirements as those imposed by New Jersey in this respect. Such a determination would only 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.

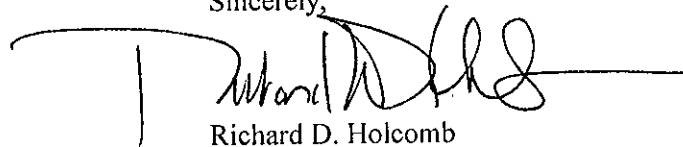
State Notified

By letter dated February 20, 2008 (enclosed), ATA has expressed its concerns to New Jersey over its requirements for the Motor Fuel Transport License Plate and Transport License Certificate and requested the state immediately to cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. The state has not favored us with a response.

Conclusion

In conclusion, ATA asks that the Secretary determine that the commercial motor vehicle identification requirements imposed by New Jersey on interstate motor carriers under N.J.S.A. 54:39-41 and 54:39-53 are preempted by Section 4306 of SAFETEA-LU.

Sincerely,



Richard D. Holcomb

Enclosures

cc: Gail Toth, NJMTA

N.J.S.A. 54:39-41

Effective: [See Text Amendments]

New Jersey Statutes Annotated Currentness

Title 54. Taxation

Subtitle 6. Tax Upon Sale of Motor Fuels

² Chapter 39. Imposition and Collection of Tax (Refs & Annos) ² Article 6. Carriers of Fuels**→ 54:39-41. Registration of conveyances; license certificates and plates; fees**

Every person engaged in the business of hauling, transporting or delivering fuel, shall, before entering upon the highways or waterways of this State with any conveyance used therein, apply for the registration thereof to the director on forms prescribed by the director. Upon receipt of any application, the director shall issue a license certificate and license plate for each conveyance which shall show the license number assigned and which shall be displayed on the conveyance at all times in such a manner as the director may regulate. An annual license fee of \$50 shall be paid for the licensing of each such conveyance. Nothing contained in this section shall in any manner relieve or discharge persons obtaining licenses thereunder from complying with any or all provisions of other laws.

CREDIT(S)

Amended by L.1938, c. 283, p. 610, § 2; L.1939, c. 209, p. 603, § 5; L.1948, c. 169, p. 909, § 6; L.1950, c. 144, p. 292, § 13; L.1971, c. 69, § 3, eff. April 1, 1971; L.1992, c. 23, § 32, eff. June 1, 1992.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Source: L.1935, c. 319, § 604, p. 1024.

Prior to the 1938 amendment, this section applied only to public highways. The 1938 amendment, in the first sentence, inserted "or waterways"; required that the registration card show the motor number, if any, and provided that "The plate shall be attached conspicuously on the rear of such conveyance in the same manner that license plates are required to be attached to motor vehicles operated in this state, in such a manner that it can be seen plainly and read at all times"; and required that the commissioner assign a registry number to the licensee.

The 1939 amendment deleted the provision requiring the commissioner to assign a registry number to the person applying for registration and changed the section to require that the license plate contain the number assigned to the "conveyance" instead of the number assigned to the licensee.

The 1948 amendment deleted a provision as to the expiration of licenses on December thirty-first in each year.

The 1950 amendment re-phrased the section to read as it now appears, except for the change in the annual license fee by the 1971 amendment.

The 1971 amendment increased the license fee from "\$2.00" to "\$5.00".

© 2008 Thomson/West. No Claim to Orig. US Gov. Works.



AMERICAN TRUCKING ASSOCIATIONS

950 N. Glebe Road ★ Suite 210 ★ Arlington, VA ★ 22203-4181
www.truckline.com



Richard D. Holcomb
General Counsel and Senior Vice President
for Law and Regulatory Affairs

February 20, 2008

The Honorable David Rousseau
Acting State Treasurer
State of New Jersey
Post Office Box 002
Trenton, NJ 08625-0002

Dear Mr. Rousseau:

The American Trucking Associations (“ATA”) is writing you concerning the enforcement on interstate motor carriers by New Jersey of the motor carrier identification requirements imposed under N.J.S.A. 54:39-41 and 54:39-53. These requirements consist of the Motor Fuel Transport License Plate and the annual Transport License Certificate (license late decal) required by the sections cited to be displayed by motor fuel transporters licensed by New Jersey on their tank trailers hauling fuel on New Jersey roads. We believe these requirements to be preempted by federal law.

Section 4306 of the federal highway reauthorization bill, SAFETEA-LU (P.L. 109-59), which was effective August 10, 2005, and is codified at 49 U.S.C. section 14506, 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, (3) a state law regarding motor vehicle registration license plates, (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

This provision of SAFETEA-LU appears clearly to preempt the identification credential requirements associated with the New Jersey Motor Fuel Transport License. A similar identification requirement imposed in association with the Oregon weight-distance tax system was determined to be preempted in 2007 by the United States Department of Transportation. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007) (copy enclosed).

Good stuff.



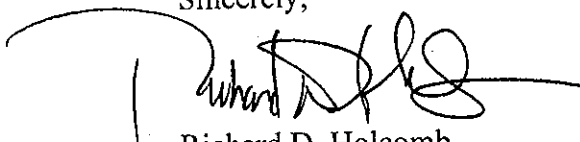
The Honorable David Rousseau
February 20, 2008
Page 2

In finding the Oregon cab-card credential preempted, the US DOT noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that 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 tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit."

We submit that there is little question that the Fuel Transport License plate and annual vehicle-specific certificate fall squarely within the scope of preemption found by the US DOT in the Oregon matter. Like the Oregon cab card, the New Jersey Fuel Transport License identification provisions are simply identification credentialing aids to tax enforcement and the burden they impose on motor carriers outweighs their value as enforcement tools. The agency's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

The American Trucking Associations (ATA) asks New Jersey to recognize that the Motor Fuel Transport plate and associated annual Transport License Decal fall within the preemptive scope of the federal law and to immediately cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. We would appreciate confirmation of your intent to do so within 60 days. Absent voluntary rescission of the requirements, ATA reserves the right to take other appropriate legal action.

Sincerely,



Richard D. Holcomb

Enclosure

cc: Gail Toth, NJMTA