



December 22, 2010

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 Training Requirements Imposed on Interstate Motor Carriers by Alabama Are Preempted by 49 U.S. Code sections 14506 and 31141

Dear Administrator Ferro:

The American Trucking Associations (ATA) hereby petitions the U.S. Secretary of Transportation (1) for a determination under 49 U.S. Code 31141 (section 31141) that the certification requirements imposed on interstate motor carriers and drivers by Alabama under Alabama Code sections 32-9A-2 and 32-9A-4 are preempted by federal law, and (2) for a determination under 49 U.S. Code 14506 (section 14506), that the identification requirements imposed by Alabama on interstate motor carriers and drivers under Code of Alabama section 32-9A-2 are likewise preempted by federal law.

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.

The Alabama Law

Subdivision (4)a of Alabama Code section 32-9A-2, subsection (a), prohibits a motor carrier from transporting metal coils in a movement that originates or terminates in Alabama unless the driver of the vehicle involved in the movement "is certified in proper load securement as provided in 49 C.F.R. §393.120. Certification shall be conducted according to standards published by the Department of Public Safety and certified by the motor carrier and the driver on forms provided by the Department." Subdivision (4)b of the same subsection (a) further requires that "The operator of a commercial motor vehicle involved in the

Good stuff.



commercial transport of metal coils ... shall be certified in proper load securement ..., carry the certification in the vehicle, and produce the certification on demand.”

Alabama Code section 32-9A-4 provides various penalties for violations of the various requirements of section 32-9A-2. With reference to motor carriers convicted of violations of subdivision (4)a, section 32-9A-4 provides for a fine of not less than \$5,000. With specific reference to drivers convicted of violations of any part of subdivision (4) of subsection 32-9A-2(a), an additional penalty is provided by subsection (g) of section 32-9A-4, which reads, “In addition to other punishment fixed by law, the court may enter an order prohibiting the person from operating any commercial motor vehicle for a period to be specified by the court, or perpetually, as the court may determine.”

I. Alabama Requirements Preempted by 49 U.S.C. §31141

Federal Statute

Section 31141 provides a framework for the U.S. Secretary of Transportation to review state laws concerning commercial motor vehicle safety. Subsection (a) of section 31141, entitled “Preemption After Decision,” reads, “A State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.”

The first step in the review of a state law is a determination under paragraph 31141(c)(1) whether the law is more or less stringent than the Federal Motor Carrier Safety Regulations (the FMCSRs), or has the same effect. A law that has the same effect as the FMCSRs may be enforced, while a law that is less stringent may not be enforced. A law found to be more stringent than the FMCSRs is subject to a secondary determination under paragraph 31141(c)(4); that is, (i) whether the law has a safety benefit or not, (ii) whether the law is incompatible or not with the FMCSRs, and (iii) whether the law would or would not cause an unreasonable burden on interstate commerce. If the result of this second determination is that the law under review either has no safety benefit, or is incompatible with the FMCSRs, or causes an unreasonable burden on interstate commerce, the law may not be enforced.

ATA submits that the Alabama law, in both (a) its driver certification requirements and (b) in the potential penalties it provides for driver violations, is more stringent than the FMCSRs, and is both incompatible with the FMCSRs and constitutes a burden on interstate commerce.

a. Analysis of Driver Certification

The relevant FMCSR concerning the securement of metal coils, 49 C.F.R. Part 393.120, contains no certification requirement for drivers or motor carriers engaged in moving these coils, and does not require a driver to carry with him and produce such a certificate upon demand.

As implemented by the Alabama Department of Public Safety,¹ a driver wishing to be certified to engage in moving metal coils in Alabama must pay a \$25 fee and pass an on-line examination on cargo securement. The examination is maintained only on the Department's website, and the Department declares that no other testing or training will qualify a driver to receive the certification necessary for Alabama. Before undertaking to haul metal coils in Alabama, a certified driver must also have "an official" of the motor carrier for which he is hauling the coils sign the certificate. While making the move in Alabama, the driver must carry the original signed certificate and present it to appropriate state personnel upon demand.

In 49 C.F.R. Part 355.5, the FMCSRs give a definition of compatibility: "*Compatible or Compatibility* means that State laws and regulations applicable to interstate commerce ... are identical to the FMCSRs ... or have the same effect as the FMCSRs...." Under this definition, the Alabama requirements are incompatible with the FMCSRs. They are clearly not identical to the FMCSRs, and they clearly reach far beyond the FMCSRs, thus having a different "effect" than the federal regulations in this area. For this reason, we believe these state requirements are preempted by section 31141.

The Alabama requirements also constitute a burden on interstate commerce. The trucking industry already suffers from a structural shortage of qualified drivers. The imposition of additional, state-specific training and certification requirements on top of the FMCSRs will surely reduce the pool of drivers available to move metal coils into or out of Alabama, and may also reduce the number of motor carriers willing or able to undertake such movements. If, for instance, a driver has not previously been certified by Alabama, or has not previously hauled metal coils in Alabama for the carrier for which he now drives, he must not only obtain the certificate, but must return to the carrier's location – which may be far from Alabama – to have "an official" of the carrier sign it before he can take the load. Plainly, this process is apt to interfere very seriously with the efficient use of the carrier's available equipment and will often lead to delays in the shipper's business as well. Considerations such as these, which bear directly on the operations of motor carriers, clearly represent a burden on interstate commerce that is impermissible under section 31141.

b. Analysis of Penalties

The penalty provisions of the Alabama law at issue (section 32-9A-4(g), quoted above) are likewise more stringent federal law, in this case not only the FMCSRs but also federal statute. The law setting out the requirements of the Commercial Driver's License (CDL) program includes (at 49 U.S.C. section 31310) a series of violations for which a CDL-holder is to be disqualified from driving a commercial motor vehicle. The law also sets out (at 49 U.S.C. section 31311) requirements for states participating in the CDL program. Among these (at 40 U.S.C. section 31131(a)(15)) is the requirement that, "The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time

¹ The following information is taken from the Department's website:
<http://www.dps.state.al.us/HighwayPatrol/mc/Default.aspx>.

periods for which the Secretary shall disqualify the individual under subsections (b)–(e), (i)(1)(A) and (i)(2) of section 31310.” Similar provisions are found in the FMCSRs, at 49 C.F.R. Parts 383 and 384.

In permitting a court to disqualify a driver, either temporarily or permanently, from driving a commercial motor vehicle by reason of a violation of the provisions of Alabama Code section 32-9A-2, the Alabama statute is not only incompatible with the FMCSRs, but apparently also violates one of the conditions which federal law sets for the state’s participation in the CDL program. This part of the penalty provisions of the Alabama statute should also be preempted.

II. Alabama Requirement Preempted by 49 U.S. C. §14506

Federal Statute

Section 4306 of SAFETEA-LU, 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 or certain other state highway tax laws, (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

Section 14506 appears clearly to preempt Alabama’s requirement for interstate motor carriers and their drivers to carry in the motor vehicle and produce on demand a driver’s certification in cargo securement.

Earlier this year, FMCSA determined that similar identification requirements 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). Similar considerations apply in the analysis of the Alabama requirement at issue here.

Analysis

ATA submits that there is little question that Alabama’s requirement that commercial vehicle operators carry a cargo securement certificate in the commercial motor vehicle involved in certain movements falls squarely within the scope of preemption found by the FMCSA in the earlier challenges involving New Jersey, Oregon, New York City, and Cook County. Like those credentials, the requirement is simply a credentialing aid to regulatory enforcement, and the burden it imposes on motor carriers outweighs its value as an enforcement tool. Some aspects of this burden are set out above, in the analysis of the certification requirement under section 31141. FMCSA’s conclusion that this type of credential is 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 14506 that excepts from the preemption “other displays that the Secretary determines are appropriate.” ATA believes, however, that the placement of this clause 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 such regulatory requirements as that imposed by Alabama in this instance. 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 Congress clearly intended to put a stop to.

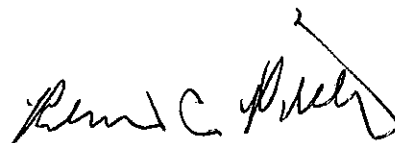
Conclusion

For the reasons laid out above, ATA submits that the requirements under Alabama law for the certification of drivers for interstate motor carriers hauling metal coils, for the display of such certificates, and for the disqualification of such drivers upon violation of such requirements are preempted under federal law, and urges the Secretary to find them unenforceable.

Sincerely,



Ted Scott
Director, Engineering Dept., ATA



Robert C. Pitcher
V.P., State Laws, ATA