

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
IDENTIFICATION OF INTERSTATE MOTOR VEHICLES:
NEW YORK CITY, COOK COUNTY AND NEW JERSEY
TAX IDENTIFICATION REQUIREMENTS;
PETITION FOR DETERMINATION
(DOCKET No. FMCSA-2009-0271)**

SUBMITTED BY:

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The American Trucking Associations (ATA) submits the following comments to the Federal Motor Carrier Safety Administration (FMCSA) on Notice of Petition for Determination and request for comments, docket number FMCSA-2009-0271 (the Notice), published in the *Federal Register* of October 19, 2009, at pages 53578-79.

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 Notice discloses, ATA filed the petitions to FMCSA which are the subject of the agency's request for comment. In those petitions, ATA takes the position that certain credential requirements imposed by New York City, New Jersey, and Cook County, Illinois,¹ are, as imposed on interstate motor carriers, invalid under federal statute, 49 U.S. Code section 14506 (Section 14506). We asked FMCSA for a determination to this effect. ATA filed the petitions with FMCSA only after notifying the three jurisdictions of our belief that their requirements were invalid under Section 14506. We received no reply from any of them.

Section 14506 was enacted as part of the 2005 federal highway reauthorization bill, SAFETEA-LU, P.L. 109-59, and was effective in August 2005. The section prohibits any state and local requirement for interstate motor carriers to display any identification device in or on a motor vehicle, except for some narrow exceptions.

¹ Specifically, the "stamp" required by New York City Admin. Code, Title 11, Ch. 8; the "transport license plate" and "transport license certificate" required by New Jersey Stats. Ann. 54:39-41 and 54:39-53; and the "window sticker" and other vehicle identification requirements of Cook Cty. Code of Ords., Ch. 74, Art. XIV.

The Section allows six exceptions to the general preemption:

- the decals and license required under the International Fuel Tax Agreement;
- the license plate and cab card required under the International Registration Plan;
- credentials required by state laws imposing weight-distance taxes;
- hazmat placards;
- safety inspection stickers; and
- devices required “under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate.”

ATA believes that the three challenged requirements do not fall under any of these exceptions to the general prohibition against state and local credential requirements. New York City imposes an annual sticker requirement on trucks as a part of a revenue-raising fee program. Cook County, Illinois, imposes a sticker requirement similar to New York City’s, also as part of a revenue-raising program.² New Jersey imposes on motor carrier hauling petroleum products a requirement for a special license plate (in addition to the registration plate) and an annual validation decal for that special plate. No other state, to our knowledge, has a requirement for such carriers similar to New Jersey’s.

The only potential exception that might apply to any of the challenged credentials is the last, referring to “other displays that the Secretary determines are appropriate.” However, a prior determination by FMCSA on just this issue seems to preclude such a finding here.³ In that instance, FMCSA found invalid under the Section a state’s tax-related requirement of a paper credential to be carried inside a vehicle. The agency 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 challenged cab card “are exactly the type of display [the Section] was enacted to prohibit.” Similar considerations apply in the analysis of the requirements at issue here.

In conclusion, ATA asks that FMCSA determine that the commercial motor vehicle identification requirements as imposed by New York City, New Jersey, and Cook County, Illinois, on interstate motor carriers are preempted by Section 14506 and may not be enforced.

² ATA is not challenging the validity of the revenue schemes of which these credential requirements form a part.

³ See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007).