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January 30, 2002

Joseph M. Clapp
Administrator
MC-A
U.S. Department of Transportation
400 Seventh St., SW
Washington, DC 20590

FMCSA-2001-11117-3

RE: Preemptive Effect of the Interim Final Rule Implementing 49 U.S.C. 5103a

Dear Administrator Clapp:

On behalf of the undersigned organizations, we are writing to stress the need to include a statement clarifying the preemptive effect of the interim final rule being developed to implement the background check provisions mandated by the USA Patriot Act (49 U.S.C. § 5103a).¹ We recognize that DOT has a statutory obligation to issue regulations that implement the USA Patriot Act and would like to direct your attention to potential problems that could arise from conflicting state requirements. While we have not yet seen the interim rule, we are concerned that state legislatures are enacting their own versions of the background check requirement that may conflict with the federal rule.

Since the enactment of USA Patriot Act, several state legislatures have introduced legislation to require background checks on individuals seeking commercial motor vehicle licenses. At this time, bills have been introduced in CA, KY, MI, MN, NJ, PA, SC and VA. However, as the state legislative sessions commence, we expect that additional states will follow suit. If the effect of these state bills is to require conflicting or non-reciprocal background checks to the federal program, there will be a significant negative impact on interstate trucking operations.

Section 5103a has been incorporated into chapter 51 of title 49 United States Code, federal hazardous materials transportation law (FHMTL). The FHMTL contains long-established standards of preemption at §5125 that should be applicable to §5103a. To avoid inconsistent action by states or local governments, as well as avoid unnecessary preemption litigation, we urge DOT to include a statement in the interim final rule that makes clear the preemptive effect of the interim final rule on dissimilar non-federal requirements.

¹ ATA opposes a state-based background check and has been working with members of Congress to replace the state-based system with an employer-based system similar to the airline and banking industries. The undersigned's comments on the preemptive effect of 5103a should not be viewed as the group's endorsement of that section's provisions.

If you have any questions concerning the issues raised herein, please call Richard Moskowitz at (703) 838-1910.

Sincerely yours,

American Trucking Associations
Dangerous Goods Advisory Council (formerly HMAC)
Institute of Makers of Explosives
National Tank Truck Carriers
Petroleum Marketers Association of America
The Fertilizer Institute
Truckload Carriers Association
Utility Solid Waste Activities Group

cc: Judith A. Rutledge, FMCSA Acting Chief Counsel
Charles Medalen, FMCSA Attorney, Enforcement and Regulatory Affairs