

ISSUE TYPE	Regulatory (State/Local)/Legislative (Federal)
AGENCY	Port of LA/CARB
STATUS	Active/Tracking
DIVISION IMPACT	MC, Marine, 3PL
INTERESTED PARTIES	ATA, OOIDA, NRDC
KEY DATES	Sept. 26, 2011 — 9 th Circuit Court of Appeals rules independent contractor status is preempted by Federal law Feb. 27, 2013 — The following states have active bills regarding the classification of independent contractors as employees: CT, IL, KY, MA, MO, NC, NY, OR, and WA June 13, 2013 — Supreme Court rules in ATA's favor regarding off-street parking plans and placards, but declined to rule on issues relating to port-mandated financial capacity and truck maintenance. August 1, 2013 — Senator Gillibrand (D-NY) and Congressman Nadler (D-NY) re-introduce bills to allow clean truck programs at ports that could include employee-driver mandates.
MOST RECENT ACTION	August 23, 2013 — A U.S. District Court issues a permanent injunction against enforcement of the Port of LA Clean Truck Program's off-street parking, placarding, and employee-driver requirements.

Statement of the Issue

Over the last several years, several U.S. ports have enacted Clean Truck Programs (CTP) in an attempt to improve air quality within and around terminal locations. Most notably, the Ports of Los Angeles and Long Beach developed programs that initially included an employee-driver requirement. The American Trucking Associations (ATA) sued the ports over this provision, which is seen by many as a way for unions to organize port drivers.

Policy Position – Adopted by the Board (11/14/2010)

IANA should oppose attempts at the local, State or Federal level, to instill employee-driver mandates on the intermodal drayage industry. In addition, IANA should continue to support the efforts of the ATA in its attempts to defeat the employee-driver requirement included in the Port of Los Angeles' concession plan under its CTP. This support should take the form of advocacy activities and, if appropriate, financial contributions to a fund specifically-designated for this purpose.

Summary

While the Port of Long Beach reached a negotiated settlement with ATA and removed its requirement that motor carriers accessing its facilities must utilize employee-drivers vs. owner-operators, the ATA and Port of Los Angeles did not reach an out-of-court agreement.

On Oct. 26, 2010, the U.S. District Court granted ATA's request for a preliminary injunction to block the employee-driver aspect of the Port of Los Angeles' concession agreement, but the Court left in place other program provisions. ATA subsequently took the case to the 9th Circuit Court of Appeals seeking reversal of the U.S. District Court's decision. IANA filed an [Amicus Brief](#) in support of the ATA's appeal to the 9th Circuit.

In September 2011, the 9th Circuit Court of Appeals ruled independent contractor status is preempted by Federal law, but upheld pieces of the concession requirement relating to safety and truck maintenance.

ATA then petitioned the U.S. Supreme Court to review this decision. The Supreme Court heard arguments on April 16, 2013, and on June 13, 2013, released its unanimous decision, siding with ATA, that the FAAAA expressly preempts the Port's placard and parking requirements. However, the Court declined issue a decision regarding a port's ability to suspend or revoke a carrier's access to a port facility based on their failure to comply with port-mandated rules relating to financial capacity and truck maintenance.

Further diminishing the Port of Los Angeles' Clean Truck Program, the U.S. District Court in Central California issued an injunction on August 23, 2013 blocking enforcement of the off-street parking, placarding, and employee-driver requirements.

On August 1, 2013 Senator Kristen Gillibrand (D-NY) and Congressman Jerry Nadler (D-NY) re-introduced the "Clean Ports Act" which would amend the FAAAA to allow for states or their political subdivisions to adopt requirements for commercial motor vehicles servicing ports that could include employee driver mandates.

Potential Impact to Intermodal Freight Transportation

Impact 1: The employee-driver requirement of the Port of Los Angeles' concession plan would change the predominant owner-operator drayage model in use throughout the U.S. (estimated to be 80% of the intermodal driver population) and potentially set a precedent for emulation at many other port facilities in North America. Drayage rates and associated charges would likely reflect an increase to offset compliance costs of the requirement. There is also speculation that the supply of intermodal drivers would decrease under an employee model, given the inherent nature and culture of independent contractors.

Impact 2: The switch from owner-operators to employee-drivers would initiate a movement to unionize the port drayage community, which in turn, could result in additional drayage cost increases above and beyond the expense of compliant power equipment.

Impact 3: A broader implication in the employee-driver issue would result from modifications to the Federal Aviation Administration Authorization Act that would remove or temper the Federal preemption of State and local regulations of interstate motor carriers' prices, routes or services. Proponents of employee-driver mandates support the elimination of Federal preemption since it would facilitate the ability to incorporate such requirements in clean truck programs. The statute specifically provides that:

"A State, political subdivision of a State, or political authority of two or more States may not enact or enforce a law, regulation or other

provision having the force and effect of law related to a price, route, or service of any motor carrier. (49 U.S.C. Section 14501(c) (1))."

In practice, the above preemption applies when such regulations are at odds with what the market dictates. In the case of intermodal drayage operations, the business model (i.e. the market) clearly favors the use of independent contractors vs. employee-drivers.