



Owner-Operator Independent Drivers Association Inc.

James J. Johnston
President

April 11, 2012

William A. Quade
Associate Administrator
For Enforcement and Program Delivery
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Docket No. FMCSA-2011-0097, OP-1(MX) Application of Baja Express

Dear Mr. Quade:

On March 12, 2012, the Owner-Operator Independent Drivers Association, Inc., submitted comments to FMCSA questioning FMCSA's acceptance of the incomplete application for operating authority of Mexican motor carrier Baja Express. On the OP-1(MX) application published by FMCSA on its website and submitted to the pilot program docket by OOIDA, Baja Express did not disclose that it was related to an affiliated motor carrier that previously held U.S. operating authority. According to the Applicant's Oath in Section IX of the OP-1(MX), such an omission of material facts is a federal criminal violation.

Your letter of March 21, 2012, in response did not address the seriousness of Baja Express' omissions of material facts on its application. Your letter states that FMCSA has simply accepted a more complete application by Baja Express, and you enclosed another application for Baja Express *dated the same day as the original application*. No part of your letter indicates that Baja Express' incomplete application had any negative consequences on FMCSA's approval of Baja Express' operating authority or its acceptance into the Mexican truck pilot program.

In your letter you express regret that FMCSA's application process was sufficiently transparent to allow the public to review Baja Express' original incomplete application. Your letter asserts that OOIDA's comments were outside of the PASA subject matter. Finally, the second Baja Express application that you attached to your letter and submitted to the regulatory docket was not signed by any individual.

Your letter raises several important questions:

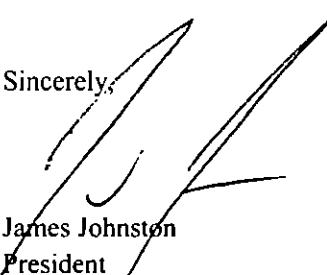
- 1) When and how was it discovered by FMCSA that Baja Express' application was incomplete? Who made the decision and on what basis was Baja Express permitted to submit another application and that it be backdated to the original application date? If Baja Express submitted these applications in

accordance with the form's instructions, how could both applications be signed and dated on September 15? On what date was the subsequent application actually signed and submitted?

- 2) Does a motor carrier's failure, such as Baja Express', to provide complete information on its application, as specifically required in the OP-1(MX) instructions and in violation of the applicant's oath, have any negative consequences with regard to FMCSA's decision to grant that carrier operating authority? What standards does FMCSA use to evaluate this issue?
- 3) Isn't an accurate and complete OP-1(MX) application a prerequisite to commencing a PASA? With regard to your assertion that OOIDA's comments were not relevant to the PASA, aren't any records of safety violations from an affiliated motor carrier relevant to the central goal of a PASA: to ensure the motor carrier has sufficient safety management practices in place? Here OOIDA found specific instances where the affiliated motor carrier failed to remedy specific violations found during subsequent vehicle inspections within the United States – not having a working fire extinguisher or horn! Is that not relevant to the carrier's safety management practices? Was the person performing the PASA aware of the applicant's affiliated carrier at the time of the PASA?
- 4) Why was it regrettable that the public came to view Baja Express' original application? Wouldn't FMCSA's stated goal of transparency of the pilot program process have been undermined if this application were hidden from the public? Wouldn't it have been more regrettable if that deficient application were kept from public view?
- 5) The instructions to the OP-1(MX) require the form to be signed "by the applicant only" and that the original and one copy be submitted to FMCSA by mail. Why does neither the Baja Express application found and submitted to the docket by OOIDA, nor the replacement application attached to your letter and newly posted by FMCSA on its website, contain the applicant's signature?
- 6) Does an application with the applicant's signature exist? If not, has the agency acted upon an unsigned application for operating authority? Or is it possible that someone at the agency itself completed this form for the motor carrier?

OOIDA is concerned that FMCSA's actions to accept Baja Express' application follow a pattern by which the Agency has chosen to permit less than full compliance with U.S. rules in order to promote its pilot program, rather than require such carriers to meet the same standards required of U.S. motor carriers. I look forward to your response.

Sincerely,


James Johnston
President