



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013-0353]

Article 19-A of the State of New York’s Vehicle and Traffic Law

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of petition for determination of preemption; request for comments.

SUMMARY: FMCSA requests comments on petitions submitted by the American Bus Association (ABA) and Motor Coach Canada (MCC) seeking a determination that Article 19-A of the State of New York’s Vehicle and Traffic Law governing drivers of passenger-carrying interstate motor vehicles is preempted by Federal law. FMCSA requests comments on whether Article 19-A has safety benefits, how it is being enforced against interstate passenger carriers and its effect, if any, on interstate commerce.

DATES: Comments are due on or before [INSERT DATE 60 DAYS FROM PUBLICATION].

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. To allow effective public participation before the comment deadlines, however, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments. Do not submit the same comments by more than one method.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the “help” section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in this docket. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. FMCSA will continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-7056. If you have questions on viewing or submitting material to the docket, call U.S. DOT Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background

Provisions of Article 19-A of the State of New York's Vehicle and Traffic Law and its implementing regulations (15 CRR-NY ch. 6) establish a wide range of requirements applicable to both interstate and intrastate passenger carriers operating in New York. Under this regulatory scheme, all interstate passenger carriers must file an annual compliance affidavit certifying that their drivers are not disqualified under State law and reporting the number of days and vehicle miles of bus service provided in New York during the previous year. An interstate carrier is generally exempt from the rest of Article 19-A, which includes requirements related to employment, driver medical qualifications, reporting, recordkeeping and other matters affecting both drivers and carriers, unless it operates certain types of school buses or operates in New York for more than 100 days or more than 10,000 vehicle miles annually. Interstate carriers that exceed the 100 day or 10,000 mile threshold can apply for a waiver for bus drivers who operate less than 30 days per year in New York (N.Y. Veh. & Traf. Law, § 509-n; 15 CRR-NY § 6.14). Otherwise, an interstate passenger carrier operating in New York is required to comply with Article 19-A. The New York Department of Motor Vehicles (NY DMV) makes information about compliance with Article 19-A available through the following web link:
<http://www.dmv.ny.gov/art19.htm>.

By letter dated June 28, 2011, MCC requested that FMCSA preempt Article 19-A, alleging that it creates a burden on interstate commerce by imposing requirements that are more stringent than Federal regulations. MCC stated that 49 CFR part 391 of the Federal Motor Carrier Safety Regulations (FMCSRs) contains comprehensive driver qualification and licensing requirements and that the requirements of Article 19-A impermissibly regulate interstate passenger carrier operations. MCC specifically identified New York's request for bus driver information (a two-page form for each driver), an Affidavit of Compliance and an annually-updated roster as unlawful burdens. On July 18, 2011, the ABA wrote a similar letter, objecting to New York's enforcement of Article 19-A, but, at that time, specifically stated that it was not requesting preemption.

In response, on March 29, 2012, FMCSA sent a letter giving the NY DMV an opportunity to respond to MCC's and the ABA's letters. The letter also asked whether the NY DMV applies Article 19-A to interstate carriers and how it uses the information it collects. By letter dated July 31, 2012, the DMV responded, stating that Article 19-A applies to interstate carriers and that it keeps the information it collects in its files, notifies carriers when a driver's CDL is revoked or suspended, and notifies school bus operators of the results of the mandatory criminal history checks.

On September 7, 2012, the ABA sent another letter, this time requesting that FMCSA determine that Article 19-A is preempted because it has no demonstrated safety benefit, is not compatible with federal requirements and places an undue burden on interstate commerce. ABA stated that the requirements of Article 19-A exceed Federal driver qualification requirements, burdening interstate carriers. ABA specifically objected to those provisions of Article 19-A that require carriers to report information to the NY DMV about a driver's employment status,

disqualification, pending criminal charges, out-of-State driving record, miles driven and number of convictions and accidents. ABA also objected to the requirements that carriers participate in New York's Conviction and Accident Notification program, establish an escrow account in New York, administer tests and assessments of driving skills in excess of that required by the FMCSRs, and submit affidavits attesting to compliance with Article 19-A.

The letters referenced above are available in the docket for this proceeding.

Applicable law

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) has the same effect as a regulation prescribed under 49 U.S.C. § 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation (49 U.S.C. § 31141(c)(1)). If the Secretary determines that a State law or regulation has the same effect as a regulation based on § 31136, it may be enforced (49 U.S.C. § 31141(c)(2)). A State law or regulation that is less stringent may not be enforced (49 U.S.C. § 31141(c)(3)). And a State law or regulation the Secretary determines to be additional to or more stringent than a regulation based on § 31136 may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce (49 U.S.C. § 31141(c)(4)). To determine whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other

States will have on interstate commerce (49 U.S.C. § 31141(c)(5)). The Secretary's authority under § 31141 is delegated to the FMCSA Administrator by 49 CFR 1.87(f).

Request for Comments

Although preemption under § 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comment on what effect, if any, Article 19-A and its accompanying regulations have on interstate motor carrier operations. Commenters are encouraged to provide information about the regulatory scheme's safety benefits, if any, and whether it constitutes a burden on interstate commerce or is incompatible with the FMCSRs. FMCSA is particularly interested in specific information on how New York enforces Article 19-A against interstate passenger carriers. In requesting comments, FMCSA does not seek legal conclusions, but requests commenters to submit data supporting their positions.

Issued under the authority of delegation in 49 CFR 1.87. September 3, 2013

Anne S. Ferro
Administrator

[FR Doc. 2013-22162 Filed 09/11/2013 at 8:45 am; Publication Date: 09/12/2013]