



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0048]

California Meal and Rest Break Rules; Petition for Determination of Preemption

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

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

SUMMARY: FMCSA requests comments on a petition submitted by the American Bus Association, Inc. (ABA) requesting a determination that the State of California's Meal and Rest Break Rules (MRB Rules), as applied to drivers of passenger-carrying commercial motor vehicles (CMVs) subject to FMCSA's hours of service (HOS) regulations, are preempted by Federal law. FMCSA requests comments in response to this petition.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS**

AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2019-0048 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the *Public Participation and Request for Comments* section below for further information.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

FOR FURTHER INFORMATION CONTACT: Tracy M. White, Enforcement and Litigation Division; FMCSA Office of Chief Counsel; Telephone: (202) 493-0349; e-mail: Tracy.White@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0048), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may

submit your comments and materials online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2019-0048" in the "Keyword" box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: DOT solicits comments from the public to better inform its preemption determinations. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in

the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2018, FMCSA granted petitions filed by the American Trucking Associations, Inc. and the Specialized Carriers and Rigging Association, and determined that the California MRB Rules, as applied to property-carrying CMV drivers subject to FMCSA's HOS regulations, are preempted under 49 U.S.C. § 31141. (Docket No. FMCSA-2018-0304; 83 Fed. Reg. 67470 (December 28, 2018)). On January 10, 2019, the ABA submitted a petition to FMCSA seeking a determination that the same provisions of the California MRB Rules, as applied to passenger-carrying CMV drivers subject to FMCSA's HOS regulations, are also preempted under 49 U.S.C. § 31141.

The ABA's petition states that the California Labor Code requires employers to "provide employees with a meal break of not less than 30 minutes for every five hours worked." Petition at 2 (citing Cal. Lab. Code § 512(a); California Code of Regulations (CCR) Section 11090(11)). In addition, the petition states that "every employer is required to 'authorize and permit' all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, at the rate of ten minutes net rest time per four hours or major fraction thereof." *Id.* (quoting 8 CCR 11090(12)). This authorized rest period time must be "counted as hours worked for which there shall be no deduction from wages." *Id.* The petition further states, "[S]ection 226.7(b) of the California Labor Code states '[a]n employer shall not require an employee to work

during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission” *Id.* (quoting Cal. Lab. Code § 226.7(b)).

In its petition, the ABA alleges that the California MRB Rules undermine existing Federal fatigue management rules for passenger carriers and that they conflict with driver attendance needs. Petition at 5-11. The petition also contends that it is difficult for drivers of passenger-carrying CMVs to comply with the MRB Rules due to the lack of adequate parking and due to Federal service and security requirements. *Id.* at 8-10. Lastly, the petition argues that the cost of complying with the MRB Rules creates an unreasonable burden on interstate commerce. *Id.* at 10-11.

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 decides that a State law or regulation has the same effect as a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may be enforced. 49 U.S.C. 31141(c)(2). If the Secretary decides that a State law or regulation is less stringent than a regulation prescribed under 49 U.S.C. 31136, the State law or

regulation may not be enforced. *Id.* § 31141(c)(3). If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. 31136, the State law or regulation 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. *Id.* § 31141(c)(4). In deciding 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. *Id.* § 31141(c)(5). The Secretary's authority under 49 U.S.C. § 31141 is delegated to the FMCSA Administrator by 49 CFR 1.87(f).

Request for Comments

Although preemption under 49 U.S.C. 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comments on any issues raised in the ABA's petition or otherwise relevant. The Agency has placed the petition in the docket.

Issued on: May 3, 2019.

Raymond P. Martinez,
Administrator.