



DEPARTMENT OF TRANSPORTATION[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA-2013-0353]

RIN [2126-AA70 Revise]

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

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

ACTION: Notice of petition for determination of preemption; reopening of the comment period.

SUMMARY: On September 12, 2013, FMCSA published a request for comments on petitions submitted by Motor Coach Canada (MCC) and the American Bus Association (ABA) 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. The comment period closed on November 12, 2013. The Agency received 6 comments. In view of the passage of time since the initial request for comments, and because ABA recently requested that the docket be re-opened for additional comments, FMCSA is reopening the comment period for 30 days to ensure that all interested parties have an opportunity to comment or provide new information.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2013-0353 using any of the following methods:

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

- 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., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Regulatory and Legislative Affairs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 0001; by email at charles.medalen@dot.gov, or by telephone at 202–366–1354. 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

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2013-0353), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may

submit your comments and material 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 email address, or a telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2013-0353, 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 on 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. FMCSA may issue a final determination at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2013-0353, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey

Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking and other processes. 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.

II. Background

On September 12, 2013, FMCSA published notice of a petition for determination of preemption, under 49 U.S.C. 31141, of Article 19-A of the State of New York's Vehicle and Traffic Law and its implementing regulations (15 CRR-NY Ch.6) [78 FR 56267]. Article 19-A and the implementing regulations 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. However, interstate carriers that exceed the 10,000-mile thresholds can apply for a waiver for bus drivers who operate

less than 30 days per year in New York. 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>.

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on commercial motor vehicle 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 that 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; (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 regulations 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 has been delegated to the FMCSA Administrator by 49 CFR 1.87(f).

Comments Requested

On July 2, 2019, ABA asked the Administrator to re-open the docket “for any additional public comments on matters that might have arisen since the September 12, 2013 notice and to issue a final determination of preemption as soon as practicable.” The ABA letter is available in the docket for this proceeding. In view of this request and the time that has passed since the publication of the 2013 notice, FMCSA is re-opening the comment period to allow the public another opportunity to review the MCC and ABA applications for a determination of preemption, which are in the docket listed above, and to offer comments. Although preemption is a legal determination reserved to the judgment of the Agency, FMCSA welcomes comment on any issues raised by MCC and ABA, or that otherwise may be relevant to this proceeding.

Issued on: August 26, 2019.

Raymond P. Martinez
Administrator

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