



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0128]

**Washington Meal and Rest Break Rules for Commercial Motor Vehicle Drivers;
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 Washington Trucking Associations, Inc. (WTA) requesting a determination that the State of Washington's Meal and Rest Break Rules (MRB rules), as applied to drivers of 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-2019-0128 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-2019-0128), 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-2019-0128” 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 California's meal and rest break 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 April 8, 2019, the WTA submitted a petition to FMCSA seeking a determination that Washington's MRB rules are also preempted under 49 U.S.C. 31141.

The WTA's petition states that Washington law requires employers to provide employees with a meal period of at least 30 minutes for every 5-hour work period and a 10-minute break for every 4-hour work period. *See* Petition at 2 (citing Wash. Admin. Code (WAC) 296-126-092). In addition, the petition states that while "employees may not waive their right to a rest period at all," employees may waive their right to a meal break. *Id.* (citations omitted). However, the WTA contends that "a missed [meal] break creates the presumption of a violation, with the burden on the employer to prove waiver as an affirmative defense." *Id.* (citations omitted). In its petition, the WTA explains that "Washington's rules contemplate a paid, on-duty 30-minute meal break when the employee is required by the employer to remain on duty on the premises." However, "even if the 30-minute break is paid pursuant to that provision," the WTA argues that employers remain obligated to "make every effort to provide employees with an uninterrupted meal period" and to "continue the meal period until the employee has received 30 minutes total of mealtime." *Id.* at 2-3.

In its petition, the WTA alleges that similar to California’s requirements, the Washington MRB rules are “regulations on commercial motor vehicle safety within the meaning of [49 USC 31141]” and that they are “additional to or more stringent than FMCSA’s rules.” Petition at 4-5. Additionally, the petition states that the Washington MRB rules have no safety benefit beyond those provided by FMCSA’s rules, are incompatible with the Federal HOS regulations, and impose an unreasonable burden on interstate commerce. *Id.* at 5-7. The petition states, “Given the similarity between Washington and California meal and rest break rules, the Agency’s analysis of California’s rules in its recent preemption order applies equally to Washington’s.” *Id.* at 4.

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; (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 WTA's petition or otherwise relevant. The Agency has placed the petition in the docket.

Issued on: September 27, 2019.

Raymond P. Martinez,

Administrator.

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