



Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0165]

Nationwide Freight Systems, et al.; 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 Nationwide Freight Systems, Inc., Leader U.S. Messenger, Inc., and Stott Contracting, LLC, requesting a determination that certain carrier identification requirements imposed by the Illinois Commerce Commission are preempted by 49 U.S.C. 14506.

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-2019-0165 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: Frederic L. Wood, Legislative and Regulatory Affairs Division; FMCSA Office of Chief Counsel; Telephone: (202) 493-0349; E-mail: Frederic.Wood@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-2019-0165), 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 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 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-2019-0165" 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.

Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also 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.

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 DOT Headquarters 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 May 26, 2017, Nationwide Freight Systems, Inc., Leader U.S. Messenger, Inc., and Stott Contracting, LLC (“petitioners”) submitted a petition to FMCSA requesting a determination that certain identification requirements imposed on motor carriers by the Illinois Commerce Commission are preempted by Federal law. Petitioners are motor carriers operating both in interstate commerce and in intrastate commerce within Illinois.

The provisions of an Illinois statute are involved in this matter. Specifically, 625 ILCS 5/18c-4104, entitled “Unlawful Operations,” states, in part:

(1) Prohibition. Except as provided in Article I of this Sub-chapter [625 ILCS 5/18c-4101 et seq.], and subject to the provisions stated herein, it shall be unlawful for any person to:

(a) Operate as an intrastate motor carrier of property without a license from the Commission; or as an interstate motor carrier of property without a registration from the Commission.

* * *

(c) Operate, as an intrastate motor carrier of property, any motor vehicle which does not carry a copy of a valid, current license issued by the Commission to such carrier; or operate, as an interstate motor carrier of property, any motor vehicle which does not carry a copy of a valid, current registration issued by the Commission to such carrier; or fail to produce such copy on request; provided that an authorized interstate motor carrier of property shall be exempted from the requirement that a copy of its registration be carried in each motor vehicle.

* * *

(f) Operate, as an intrastate motor carrier of property, any motor vehicle for which the carrier has not executed a prescribed intrastate cab card, with current Illinois intrastate identifier printed thereon; or, as an interstate motor carrier of property, any motor vehicle for which the carrier has not executed a prescribed interstate cab card, with current Illinois interstate identifier affixed or printed thereon.

(g) Operate, as an intrastate motor carrier of property, any motor vehicle which does not carry the properly executed intrastate cab card, with current Illinois intrastate identifier printed thereon; or, as an interstate motor carrier of property, any motor vehicle which does not carry the properly executed interstate cab card, with current Illinois interstate identifier affixed or printed thereon.

* * *

The proviso at the end of subsection (c) above exempts interstate motor carriers of property from the requirement to carry a copy of their registration in each vehicle such carriers operate. But there is no exemption provided in the statute for such carriers from the requirement to execute and carry a cab card in each vehicle, as provided in subsections (f) and (g).

Illinois Commerce Commission regulations also include requirements for executing and carrying cab cards in motor vehicles operated by motor carriers:

- a) Cab cards/identifiers shall be executed, carried, or presented in satisfaction of the requirements of the Illinois Commercial Transportation Law ..., [92 Ill. Administrative Code] Part [1302], or Commission orders no earlier than December 1 preceding the calendar year for which fees were paid, and no later than February 1 of the calendar year for which fees were paid
- b) A vehicle operated in both intrastate and interstate commerce must carry both an intrastate and an interstate cab card/identifier.

92 Ill Administrative Code 1302.15.

Applicable Law

Petitioners have requested a determination that both the licensing and registration (public carrier certificate) and cab card requirements of the statute and the Illinois Commerce Commission regulations are preempted under 49 U.S.C. 14506. This statute provides that no State, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (“CMV,” as defined in 49 U.S.C. 14504a(a)(1)), other than forms of identification required by the Secretary of Transportation under 49 CFR 390.21.¹

The applicable definition of CMV for section 14506 is in section 14504a(a)(1) (which incorporates the CMV definition in 49 U.S.C. 31101), and states that a CMV is a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle: (1) has a gross vehicle weight rating or gross

¹ 49 U.S.C. 14506(a) enacted by section 4306(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. Law 109-59, 119 Stat. 1773 (Aug. 10, 2005).

vehicle weight of at least 10,001 pounds, whichever is greater; (2) is designed to transport more than 10 passengers including the driver; or (3) is used in transporting material determined to be hazardous under 49 U.S.C. 5103 and in a quantity requiring placarding as provided in regulations prescribed under 49 U.S.C. 5103.

There are two important aspects of this definition that are relevant to any determination under section 14506: (1) it applies to a CMV used “in commerce,” which means that it applies to vehicles operated either in intrastate or in interstate transportation; (2) the definition is slightly different from the definition of CMVs used to transport property subject to safety regulation under 49 U.S.C. 31131-51. See 49 U.S.C. 31132(1). Note also that provisions relating to CMVs used to transport passengers are not relevant to the preemption determination under consideration here, as the Illinois statutes and regulations in question apply only to vehicles transporting property (including hazardous materials).

Section 14506 also includes several exceptions to its general prohibitions. A State may continue to require display of credentials that are required: (1) under the International Registration Plan under 49 U.S.C. 31704; (2) under the International Fuel Tax Agreement under 49 U.S.C. 31705, or under an applicable State law if, on October 1, 2006, the State had a form of highway use taxation not subject to collection through the International Fuel Tax Agreement; (3) under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate; (4) in connection with Federal requirements for hazardous materials transportation under 49 U.S.C. 5103; or (5) in connection with the Federal vehicle inspection standards under 49 U.S.C. 31136. 49 U.S.C. 14506(b).

Request for Comments

FMCSA seeks comments in response to this petition. Comments are specifically requested on whether the registration and cab card requirements involved (625 ILCS

5/18c-4104(c), (f) and (g)) should be determined to be “appropriate” under the discretionary authority in 49 U.S.C. 14506(b)(3) providing that a State may require display of credentials under a State law requiring motor vehicle license plates or other displays the Secretary deems appropriate. Commenters are also encouraged to submit information on the effects of the requirements on safety, operations, and the economics of motor carriers operating in the State of Illinois.

FMCSA requests commenters to limit their submissions to these issues and to submit data supporting their positions. The Agency has placed the petition in the docket (No. FMCSA-2019-0165).

James W. Deck
Deputy Administrator

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