Opposition to NY 19-A Requirements for Interstate Carriers, ABA Petition to FMCSA Talking Points

Issue: *In 2011, the American Bus Association (ABA) petitioned FMCSA to preempt provisions of Article 19-A of the State of New York's Vehicle and Traffic Law, along with its implementing regulations, as applicable to interstate carriers. In 2012, FMCSA published the initial petition and established a comment docket, but took no action. Now, in 2019, FMCSA has re-opened the matter by re-publishing notice of the petition for additional comment.* ***ABA encourages all operators to file comments in support of FMCSA making a preemption determination that Article 19-A and does not apply to interstate carriers. COMMENTS ARE DUE OCTOBER 3, 2019****.*

Background: *Provisions of 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, among other things, file an annual compliance affidavit certifying 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.*

In its initial petition, ABA argued the requirements of Article 19-A exceed federal driver qualification requirements administered by FMCSA, and overly burden interstate carriers. ABA specifically objected to 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.

Issues with Article 19-A Requirements:

* Article 19-A is incompatible with the federal regulations, and imposes an unreasonable burden on interstate commerce. For this reason Article 19-A should be preempted by Federal law.

* Article 19-A contains exemption language to purportedly relieve compliance burdens for interstate operators; but in reality the exemption language actually broadens Article 19-A's applicability to include even more interstate operators. For example:

1. For any year an interstate carrier operates more than one hundred days in the state of New York, then the following year the interstate carrier must comply with the expanded 19-A requirements, including employment notification, driver testing/training, NY state accident notification program participation and pre-payment, etc.
2. If an interstate carrier operates more than ten thousand bus vehicle miles in the state of New York, they must comply with the expanded 19-A requirements. So, for instance, the distance from NYC to Stamford, CT is roughly 40-45 miles. If a CT-based carrier does 250 trips

annually, they will easily eclipse this threshold.

3. If a driver drives/works less than 30 days in New York state over the course of a year, they can be excused from the expanded 19-A requirements, even if their company must comply.

* Article 19-A creates unwarranted financial burdens through driver monitoring requirements, which include prepayment for License Event Notification Service (LENS) enrollment and notifications for all drivers, even if the company is not domiciled in the state and is an interstate carrier. For example:

- Add a driver – $7.00
- Remove a driver – $0.00
- License event notifications– $1.00 per notification
- Additional driving records – $7.00 per record

* Article 19-A also imposes additional and unnecessary notification burdens on interstate operators, by requiring them to inform the state when:

- a driver leaves their employ.
- a new driver is hired.
- a driver receives a disqualifying conviction (that may or may not result in a downgrade of their CDL).

* Article 19-A also requires monitoring and reporting by operators of driver criminal convictions unrelated to CDL criteria. Such monitoring and reporting is above and beyond federal requirements, and imposes an impracticable burden on interstate operators. Article 19-A requirements for monitoring and reporting criminal convictions that do not show up in a motor vehicle record (MVR) are beyond FMCSA's record keeping requirements.

- Alternatively, the FMCSA Pre-Employment Screening Program (PSP), the federal program for driver record monitoring, is universally accessible, and provides violation and license downgrade information across all jurisdictions and state licensing agencies. It is also far less costly to use PSP, than annually (or more frequently) requesting motor vehicle report from several individual jurisdictions and their state licensing agencies. Thus it is redundant for the state to require participation in the state program over other available programs.

* Article 19-A requirements interfere with the federally established CDL program in terms of ensuring reciprocity between state licensing agencies, a federal interest. Pursuant to 19-A requirements, the state of New York will not accept driver CDLs issued by another state unless and until operators certify compliance with the additional requirements of 19-A.

* Article 19-A's every other year or biennial training requirements for behind-the-wheel driving, is above and beyond the FMCSA driver training requirements; and further, motor carriers should not be required to become training providers. Instead:

- Any 19-A training requirements should be consistent with the requirements of the entry-level driver training rule and the training provider registry.
- Any 19-A related training or testing burden should rest with the state licensing agency, not the motor carrier.

* Article 19-A requirements does not enhance safe operations or highway safety.

* The Federal Motor Carrier Safety Regulations (FMCSRs) are designed to provide a national uniform standard for motorcoach drivers, both in terms of qualification and training. There is no basis to permit additional or conflicting regulations or standards, as found in Article 19-A, by an individual state. Such actions destroy the uniformity of a national system, undermine safety and the role of the Federal regulator, and interfere with interstate commerce.

To file comments, visit - https://www.regulations.gov/docket?D=FMCSA-2013-0353.