

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103." (49 CFR 390.5.)

#### Public Comments Invited

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: February 26, 2013.

**G. Kelly Leone,**

*Associate Administrator, Office of Research and Information Technology and Chief Information Officer.*

[FR Doc. 2013-05092 Filed 3-4-13; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0318]

#### Alabama Metal Coil Securement Act; Petition for Determination of Preemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Order; Grant of Petition for Determination of Preemption.

**SUMMARY:** FMCSA grants a petition submitted by the American Trucking Associations (ATA) requesting a determination that the State of Alabama's Metal Coil Securement Act (the Act) is preempted by Federal law. Federal law provides for preemption of State commercial motor vehicle (CMV) safety laws that are more stringent than Federal regulations and (1) Have no safety benefit; (2) are incompatible with Federal regulations; or (3) would cause an unreasonable burden on interstate commerce. FMCSA has determined that there is insufficient support for the claimed safety benefits and that the Act

places an unreasonable burden on interstate commerce.

**DATES:** This decision is effective April 4, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-7056; email [Genevieve.Sapir@dot.gov](mailto:Genevieve.Sapir@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at time or 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., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132).

##### Background

##### *The Metal Coil Securement Act*

The Act, adopted in 2009, prohibits a motor carrier from transporting metal coils in a movement that originates or terminates in Alabama unless the driver is certified in load securement (Ala. Code § 32-9A-2(a)(4)a.). The law, as originally enacted, also required the driver to carry a copy of the certification in the vehicle and produce it upon demand (Ala. Code § 32-9A-2(a)(4)b.). Maximum penalties for violating these requirements include fines of between \$5,000 and \$10,000, jail time and/or a court order prohibiting the driver from operating a CMV in the State (Ala. Code § 32-9A-4(d)-(g)). Alabama Promulgated Rule No. 760-X-1-.16, adopted on April 5, 2011, offers CMV drivers three options to become certified in load securement: (1) Obtain a Metal Coil Certificate by taking and passing the "Securing Metal Coils Course" available for \$25.00 on the web site, [www.metalcoiltraining.com](http://www.metalcoiltraining.com); (2) obtain a

commercial driver's license (CDL) endorsement that allows the driver to haul metal coils in the issuing State; or (3) obtain a Metal Coil Certificate from a motor carrier authorized by the Alabama Department of Public Safety (ADPS) to issue the Certificate, which would require the carrier's safety compliance officer to submit a notarized affidavit that he/she has personal knowledge that the carrier requires every driver to be trained in the requirements of 49 CFR 393.120 before hauling metal coils. Federal regulations for securing metal coil loads, codified in 49 CFR 393.120, do not require any such driver certification.

In June 2011, Alabama amended the Act, rescinding the requirement that drivers carry copies of their metal coil load securement certification in their vehicles. Currently, the Act continues to require drivers to obtain certification, as specified in Alabama Promulgated Rule No. 760-X-1-.16, but drivers are no longer required to produce the certification upon demand.

##### *FMCSA and ATA Responses*

On June 26, 2009, FMCSA sent a letter to then-Governor Bob Riley of Alabama stating that the Act appeared to be incompatible with the requirements of FMCSA's Motor Carrier Safety Assistance Program. FMCSA also drew attention to two Federal laws authorizing preemption of State legislation (49 U.S.C. 14506 and 31141) and indicated that they might be applicable. The Agency urged State officials to work together with FMCSA officials to resolve any conflict between State and Federal law. Governor Riley responded on August 26, 2009, explaining that the Act was adopted in response to a number of accidents in Alabama involving the transport of metal coils. Governor Riley took the position that Alabama's metal coil load securement certification requirements were not preempted by Federal law.

On December 22, 2010, ATA petitioned FMCSA for a determination that Alabama's metal coil load securement certification requirements and penalties create an unreasonable burden on interstate commerce and are preempted under 49 U.S.C. 31141. ATA contended that Alabama's requirement that drivers obtain certification in metal coil load securement is more stringent than and incompatible with Federal metal coil safety regulations.

In its December 22, 2010 letter, ATA also requested a determination that the requirement that the driver carry the certification and display it upon demand is preempted by 49 U.S.C. 14506. The recent amendment to the

Act, however, removed this requirement, rendering this aspect of ATA's request moot.

By letter dated January 25, 2011, the ADPS responded to ATA's petition. ADPS acknowledged that the requirements of the Act are more stringent than Federal regulations, but stated that the requirements should not be preempted because they have safety benefits and do not place an unreasonable burden on interstate commerce.

#### 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 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 determined 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 regulation 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 is delegated to the FMCSA Administrator by 49 CFR 1.87(f).

#### Comments

FMCSA published a notice in the **Federal Register** on November 23, 2011 (76 FR 72495) seeking comment on whether the Act is preempted by Federal law. Although preemption under § 31141 is a legal determination

reserved to the judgment of the Agency, FMCSA sought comment on what effect, if any, Alabama's metal coil load securement certification requirement has on interstate motor carrier operations. FMCSA received thirteen comments in response. The five comments opposing preemption included one each from an individual driver, a motor carrier, Advocates for Highway and Auto Safety (AHAS), the Alabama Trucking Association and the ADPS. The eight comments supporting the preemption petition included four from motor carriers, and one each from an owner-operator, ATA, an Alabama aluminum coil producer and the Owner-Operators Independent Drivers Association (OOIDA).

Commenters opposing the petition stated that the Act is appropriate because there is a lack of Federal enforcement of training requirements; cargo load securement is a leading cause of crashes; and there have not been any metal coil spills in Alabama since the Act was enacted. Commenters supporting the petition stated that the Act should be preempted because it is simply an administrative requirement and does not have safety benefits; it imposes costs on the motor carrier and metal coil industries; it is likely to lead to a proliferation of other State requirements with burdensome cumulative effects; it unfairly affects less-than-truckload (LTL) carriers; and safety risks other than improper load securement (such as excessive speed at a crash-prone Interstate highway junction) are contributing factors to the coil spills cited as justification for the Act.

#### Decision

The Agency concludes that the Act does not meet the standards set forth in 49 U.S.C. 31141 and may not be enforced. The Act imposes certification requirements on interstate CMV drivers that are not required under FMCSA's regulations. As a result, and as the ADPS has acknowledged, the Act imposes requirements more stringent than those imposed by Federal law. The only remaining issue, therefore, is whether the Act (1) Has a safety benefit; (2) is incompatible with FMCSA's regulations; or (3) would cause an unreasonable burden on interstate commerce. The Agency concludes that there is insufficient support for the claimed safety benefits and that the Act places an unreasonable burden on interstate commerce.

Although several commenters argued that the Act's requirements have safety benefits, the only evidence presented—by ADPS—was a paper showing that

there were eight metal coil spills in Jefferson County (i.e., the Birmingham area) in the three years prior to adoption of the Act and apparently none thereafter. ADPS implied that there was a correlation between reduced crashes and the adoption of the Act, but that is easier to assume than to demonstrate. For example, other commenters observed that the majority of the metal coil spills that occurred in Alabama were at "Malfunction Junction," a particularly dangerous Interstate highway junction in Birmingham, and that speed was a factor in many of these spills. They also commented that in 2007, the State reduced the speed limit at this junction in an effort to reduce crashes. Crashes typically have multiple causes; determining the "basic" cause is therefore difficult, if not impossible. Identifying the reason or reasons for a *reduction* in crashes is even more problematic, especially when the annual number of incidents—like those involving metal coils in Alabama—is small enough to be affected significantly by random variations. Given the variety of factors that may have contributed both to the occurrence of and reduction in metal coil spills, attributing the reduction to a single piece of legislation is unwarranted.

In addition, the Act's requirements are largely administrative; Alabama does not test a driver's skills in securing a load. As one commenter observed, in the case of the on-line certification option, there is no way of determining whether the person taking the test is even the driver being certified. In the case of motor carrier certification option, individual drivers are not tested; the motor carrier simply certifies that its drivers have been trained in the Federal regulations. In either case, all the driver or motor carrier is required to do is demonstrate knowledge of Federal regulations—knowledge the driver is required to have in any case. (See 49 CFR 390.3(e)(1)–(2)). In short, the Act imposes costs on interstate carriers and drivers that are not commensurate with any readily identifiable safety benefits.

Moreover, not preempting the Act could have wide-ranging implications. For example, an individual driver commented that he was required to obtain an Alabama Metal Coil Certificate before being hired by a Minnesota-based motor carrier. Although the carrier did not haul coils into or out of Alabama, it apparently wanted to be prepared to handle that kind of business should the opportunity arise. Similarly, two LTL motor carriers stated that, because of the nature of their business, they would require all drivers to obtain an Alabama Metal Coil Certificate to cover the

possibility that a driver would be asked to transport a load of metal coils in or out of Alabama at some point during their employment. The ripple effect of the Act in imposing both potential burdens and costs beyond dedicated metal-coil transporters is extensive.

Finally, the cumulative effect of multiple States requiring their own metal-coil certifications, each with an associated fee, would create an even more unreasonable burden on interstate commerce. Several commenters noted that other States have metal coil certification requirements, but that they apply only to intrastate operations. If these and other States extended their metal coil certification requirements to interstate carriers, the effect would be a patchwork of requirements, with accompanying burdens and costs.

### Conclusion

Accordingly, FMCSA grants ATA's petition for preemption. Alabama may no longer enforce the Act on interstate motor carriers.

Issued on: February 27, 2013.

Anne S. Ferro,  
Administrator.

[FR Doc. 2013-05114 Filed 3-4-13; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0023]

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 3 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

**DATES:** Comments must be received on or before April 4, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-

2013-0023 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line 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:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- **Fax:** 1-202-493-2251.

**Instructions:** Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or 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., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

### FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 3 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

#### Qualifications of Applicants

##### David Doub

Mr. Doub, 68, has had a retinal detachment in his right eye since 2009. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, "Has sufficient vision left eye to operate commercial vehicle." Mr. Doub reported that he has driven tractor-trailer combinations for 31 years, accumulating 621,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

##### Gregory S. Engleman

Mr. Engleman, 43, has had optic neuritis in his right eye since 2001. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, "It is my opinion that Mr. Engleman has sufficient vision to operate a commercial vehicle." Mr. Engleman reported that he has driven straight trucks for 7 years, accumulating 245,000 miles, tractor-trailer combinations for 19 years, accumulating 2.1 million miles. He holds a Class D Commercial Driver's License (CDL) from Kentucky. His driving record for the last 3 years shows no crashes but one conviction for moving violations in a CMV; he violated the 14 hour rule.

##### Gale Smith

Mr. Smith, age 45, has a prosthetic left eye due to a traumatic incident during childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his