

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2018–0304]

**California Meal and Rest Break Rules; 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 American Trucking Associations, Inc. (ATA) requesting a determination that the State of California's meal and rest break rules are preempted by Federal law. Among other things, FMCSA requests comments on what effect, if any, California's meal and rest break requirements may have on interstate commerce.

**DATES:** Comments must be received on or before October 29, 2018.**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2018–0304 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://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](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Medalen, Regulatory Affairs Division; FMCSA Chief Counsel; Telephone: (202) 366–1354; Email: [Charles.Medalen@dot.gov](mailto:Charles.Medalen@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****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–2018–0304), 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 email 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](http://www.regulations.gov) and put the docket number, “FMCSA–2018–0304” in the “Keyword” box, and click “Search.” When the new screen appears, click on “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](http://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.* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its determination. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**Background**

On September 24, 2018, ATA submitted a petition to FMCSA

requesting a determination under 49 U.S.C. 31141 that the State of California's Meal and Rest Break rules are preempted by Federal law (Petition). The petition stated that, under California law, within the transportation industry, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. Petition at 1–2 (citing Cal. Lab. Code § 512(a)). The petition stated that an employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. *Id.* Ordinarily, the employee must be “relieved of all duty” for the period, unless “the nature of the work prevents an employee from being relieved of all duty,” and the employee enters into a written agreement to remain on duty, which he or she may revoke at any time. *Id.* at 2 (citing Cal. Industrial Wage Commission Wage Order No. 9 § 11(C)).

The petition also stated that California law provides that, within the transportation industry, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. *Id.* (citing Wage Order No. 9 § 12(a)). The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. *Id.*

In short, California generally requires employers in the transportation industry to provide employees with an off-duty 30-minute break for every five hours worked, before the end of each five-hour period; and a ten-minute off-duty break for every four hour period (or “major fraction thereof,” *i.e.*, period greater than two hours), in the middle of each such period if possible. Commercial drivers covered by collective bargaining agreements that meet certain statutorily enumerated criteria, however, are not

subject to the meal period requirement. See *id.* (citing Cal. Lab. Code § 512(e), (f)(2)).

#### Applicable Law

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 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 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. *Id.* § 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 on implementation of the State law or regulation and all similar laws and regulations of other States. *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 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comment on any issues raised in ATA's petition or otherwise relevant. The Agency has placed ATA's petition in the docket.

Issued on: September 28, 2018.

**Raymond P. Martinez,**  
*Administrator.*

[FR Doc. 2018-21624 Filed 10-3-18; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket Number: NHTSA-2017-0057]

#### Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on September 6, 2017. This notice addresses comments received.

**DATES:** Written comments should be submitted on or before November 5, 2018.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Amy Berning, Office of Behavioral Safety, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W46-497, Washington, DC 20590; telephone: (202) 366-5587; email: [amy.berning@dot.gov](mailto:amy.berning@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Information Collection Request

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

**OMB Control Number:** To be issued at time of approval.

**Title:** Drug Use Characteristics of Drivers Arrested for Driving Under the Influence (DUI) or Driving Under the Influence of Drugs (DUID).

**Form Numbers:** NHTSA Form 1468, 1469.

**Type of Review:** New information collection.

#### Abstract:

NHTSA proposes to conduct a study to estimate the prevalence of drugs in drivers arrested for driving under the influence of a drug. Approximately 1,000 drivers arrested for DUI or DUID at two or three locations across the country will be interviewed and administered an oral fluid drug test. The primary aim of this project is to better understand the frequency of alcohol, prescription, over-the-counter (OTC), and illicit drugs in impaired driving arrests. Trained researchers will ask participants questions regarding demographics, driving, alcohol, and drug use. Participants will then be asked to provide an oral fluid sample using a collection device which will be used to test for alcohol and approximately 50 other specific drugs.

Data collection will take place over a six-month period at two to three sites across the country. The research team will coordinate with the local police departments and officials at these sites. The sites will have a private room at the booking facility for use by the research team. Each site will have at least 1,250 impaired driving arrests per year and be willing to enter into a Memorandum of Understanding with the research team regarding the study.

Data for the study will primarily be collected at a central booking facility for the site's police department. Upon arriving at the booking facility, the arresting officer or other approved police staff will briefly inform the potential participants that they have the opportunity to participate in a research study sponsored by NHTSA. Police staff will ask the participants if they would be interested in learning more about the study. If they respond yes, then they will be introduced to the trained research staff in the private study room.

The research staff will further describe the study to the potential participant. The researcher will explain to the potential participant that study data is anonymous, s/he must be 18 years of age or older to participate, s/he is free to withdraw from the study at any time, the results of the drug test and questionnaire will not be provided to anyone outside of the research team (including to the participant), and participation in the study will not be used to help or hurt the individual in