Calif., Wash. Rest Break Waivers: What Carriers Must Know

By **Jessica Scott**

Jessica Scott

In an unusual move, the Federal Motor Carrier Safety Administration is soliciting petitions to waive its own previously issued and settled rules on meal and rest break preemption for commercial drivers in California and Washington state.

The FMCSA's Aug. 14 notice appears to offer an end-around solution to the arduous process of making a new rule that would reverse the agency's preemption of California meal and rest break laws in 2018, and Washington's in 2020.

The state governments and the International Brotherhood of Teamsters are expected to grab this lifeline to resurrect the state laws for commercial drivers. If successful, the agency's invitation to seek waiver of its own rules would suggest an efficient way for other government agencies to change regulations implemented by previous administrations.

At issue are California and Washington's meal and rest break laws that impose additional breaks beyond the long-standing U.S. Department of Transportation regulations.

Under the California Labor Code, workers are entitled to a 30-minute meal break if they work more than five hours in a day and a 10-minute off-duty rest period every four hours. And the Washington Department of Labor and Industries' regulations require a 30-minute meal period between the second and fifth hours of a shift and a 10-minute rest period for every four hours of work time.

The DOT regulations, in contrast, require commercial drivers to take a 30-minute break for every eight hours of driving time, and generally allow more flexibility in driving time and rest periods.

The California and Washington state laws resulted in scheduling headaches for trucking companies — especially those crossing state lines — and created safety hazards when long-haul drivers were forced to pull over on highway shoulders to take mandated breaks. They were widely disliked by drivers who are paid by the mile or day, and who saw their workdays extended.

In 2018, the FMCSA, an agency within the DOT, found the California laws were preempted by the DOT regulations, following petitions by trucking association trade groups. The FMCSA then issued a preemption decision in 2020 for Washington's laws. Under federal law, a regulatory agency can preempt state regulations that are more stringent and burdensome on interstate commerce than equivalent federal rules.

Appeals Likely To Argue Abuse of Discretion

The primary legal argument against this new waiver process may be abuse of discretion, which would be supported by the agency's steering around the normal rulemaking process. Congressional intent, two decisions by the U.S. Court of Appeals for the Ninth Circuit, and a decision by the California Court of Appeals will undergird such an appeal.

In a 2021 decision, International Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration, the Ninth Circuit denied the teamsters' appeal of the FMCSA's 2018 preemption of the California laws, writing that the Motor Carrier Safety Act of 1984 "gives the Secretary [of the U.S. Department of Transportation] the express power to preempt state law."

A state "may not enforce a state law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced," the court explained, adding that the FMCSA did not act arbitrarily or capriciously in finding that California's laws "would cause an unreasonable burden on interstate commerce."

The Ninth Circuit reiterated its view of preemption in its 2022 decision in Valiente v. Swift Transportation Co. of Arizona LLC, which was brought by plaintiffs seeking to preserve retroactive lawsuits for violations of the California laws.

In affirming the trial court's summary judgment ruling in favor of the trucking company defendant, the Ninth Circuit said there could be no enforcement of California's meal and rest break laws regardless of when the underlying conduct occurred.

Also in 2022, the California Court of Appeals ruled in Espinoza v. Hepta Run Inc. that the federal preemption of the state's driver regulations applies to short-haul commercial drivers as well as long-haul drivers. The court cited the Ninth Circuit, and disallowed the plaintiff's argument that different federal rules for short-haul drivers in some circumstances shielded them from preemption of the general rules that apply to all commercial drivers.

FMCSA Guidance for Waiver Petitions

The FMCSA seems to acknowledge the precariousness of its legal position in its Aug. 14 notice. It suggests, in head-scratching instructions for petitioners, that they avoid arguments that conclude the "agency's [previous] preemption determinations were erroneous." Instead, petitions should show that waivers are in the public interest and consistent with safety concerns.

The FMCSA lays out three criteria that waiver petitions should address:

- The impact on the health and safety of drivers;
- Whether preemption will dissuade carriers from operating in these states, and if it will weaken the resiliency of the national supply chain; and
- Whether the state laws will exacerbate the truck parking shortage, and result in more trucks parking on the side of the road, thus creating additional dangers for drivers and the public.

The parking issue is the Achilles heel in the argument for waivers. It was one of the major reasons the state rules were preempted.

Arguably, commercial trucks parked on the side of interstates or narrower state roads impose major risks for everyone. This is particularly true for long-haul drivers, who may find themselves many miles from a rest stop suitable for big trucks when they approach the four-hour mark for a break.

In its Aug. 14 notice, the FMCSA requested that waiver requests be submitted by Nov. 13, and said it will provide a period for public comment on such requests.

Given the views of the current administration, and the apparently choreographed nature of the FMCSA's notice — a federal agency inviting petitions to set aside its own rules established during the previous administration — it is likely that the agency will move expeditiously and approve the waiver requests, thus allowing California and Washington state to reimpose their regulatory regimes for drivers sometime in 2024.

A substantial body of case law will support the trucking industry's certain appeal of the waivers if they are granted. Given the strong legal basis for an appeal, it is possible waivers could be held up by a preliminary injunction.

Nonetheless, carriers should be following the issue closely, so that they can promptly adjust operations with a return to the old rules in California and Washington state.

Jessica G. Scott is a partner at Wheeler Trigg O'Donnell LLP.