

Carmack preempts a broad range of State consumer protection laws potentially applicable to interstate household goods carriers. As was the case with the former ICC regulation amended by today's interim final rule, under current case law this rule preempts all State regulations that purport to regulate the interstate transportation of household goods subject to Federal jurisdiction.

AMSA commented that the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect and is likely to promote uncertainty and potential conflicts with States. AMSA wrote "In promulgating these regulations FHWA has expressly preempted application of any State law that would impact the services required to perform interstate transportation of household goods. States, for example, may not regulate the manner in which household goods carriers are required by FHWA to execute orders for service nor may they enforce any State regulation that would affect any other aspect of the interstate moving service performed by household goods carriers regulated by FHWA. *See, e.g., Fidelity Federal S. Sr L. Assn. v. de la Cuesta*, 458 U.S. 141, 73 L.Ed.2d 664 (1982) (Even where Congress has not completely displaced State regulation in a specific area, State law is nullified to the extent that it actually conflicts with Federal law. Federal regulations have no less pre-emptive effect than Federal statutes.) FHWA authority to issue the proposed regulations is without question. As the NPRM notes, in enacting section 14104 of the Termination Act, the enabling statute in this proceeding-Congress conferred authority on the Secretary to 'issue regulations protecting individual shippers.' That is precisely what the Secretary proposes and his action in doing so preempts all State regulations that would purport to regulate the same activities. For these reasons, the cited sentence should be removed or clarified in the final decision in this proceeding. In a similar vein, it is appropriate at this point to address certain comments of NACAA. NACAA urges that the proposed regulations should announce that they are supplementary law only and that violations will also subject movers to remedies provided by other Federal, State and local laws, such as State deceptive trade practices laws. (Comments, p. 7). This suggestion reflects a fundamental misconception of the Supremacy Clause, U.S. Constitution, Art. VI, clause 2, and Federal preemption. There is not the slightest suggestion in the law or its

precedent that Congress ever intended this explicit and comprehensive regulatory scheme to be supplemental to or superseded by any State law or regulation. Congress could not have been clearer in expressing its intent to occupy the field of interstate household goods transportation regulation. AMSA asserts the NACAA's contention is flatly wrong." The FMCSA agrees that AMSA has correctly stated current case law on the preemption issue.

#### Prior Consultations With State and Local Officials

As the AMSA pointed out, the NPRM's conclusion that this rule is not intended to preempt any State law or regulation was incorrect. Thus, the requirement in section 6(c) to consult "with State and local officials early in the process of developing the proposed regulation" in accordance with OMB guidance to send letters to State and local officials or their regional or national representative organizations, such as the National Association of Governors, did not occur. The agency did receive comments to the docket from State and local officials.

#### Summary of the Nature of State and Local Officials' Concerns

State officials recommended that the rules incorporate additional consumer protection provisions, including: (1) More comprehensive disclosure requirements, particularly with respect to insurance and carrier liability; (2) stronger arbitration requirements; (3) uniform rules governing cash-on-delivery service, including requiring movers to relinquish possession of a shipment upon payment of an amount substantially less than the amount of the estimate; (4) requiring movers to offer guaranteed delivery prices if requested by the shipper; (5) restricting billing for additional services not contained in the estimate; (6) establishing a three-day grace period allowing a shipper to rescind an order for service without penalty; (7) permitting the shipper to deduct penalties for late deliveries from the transportation charges; (8) relaxing limitations on a shipper's right to file loss and damage claims, including claims for loss and damage occurring during storage-in-transit; and (9) prohibiting demands for payment until the entire shipment is delivered.

#### Statement of the Extent To Which the FMCSA Has Addressed the Concerns of State and Local Officials

In response to these comments, FMCSA modified the proposed rules by: (1) Revising the consumer information pamphlet that movers must give

shippers to include guidance regarding their right to decline arbitration; (2) clarifying carrier liability disclosure requirements; (3) requiring movers to disclose the identity of subcontractors used to handle the move; (4) requiring movers to relinquish delivery and defer demanding payment for charges not in the estimate which the mover could have reasonably determined at the time of pick-up; and (5) mandating a three-day grace period for shippers to cancel orders for service without penalty.

#### Conclusion

The FMCSA submitted State and local official comments to the docket and this federalism summary impact statement to the Director of the Office of Management and Budget.

#### Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes in this interim final rule will not have an impact of \$100 million or more in any one year.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The majority of the information collection (IC) requirements in this IFR are not new. Yet, the FMCSA has determined, for reasons set forth below, that the information collection requirements in this IFR would technically constitute a new collection of information undertaking, thus needing a new OMB approval and control number.

The FMCSA seeks approval of the collection of information requirements in this IFR to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 375. The information collected will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer