

Docket SVC-124
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DEPARTMENT OF TRANSPORTATION
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U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE.
Washington, DC 20590

JAN 31 2008

Mr. Terry Wagar
State of New York Department of Motor Vehicles
Office of Vehicle Safety and Clean Air
6 Empire State Plaza
Albany, NY 12228

Dear Mr. Wagar:

This responds to your request for our interpretation of whether a proposed amendment to subdivision 10-d of section 375 of the New York State Vehicle and Traffic Law would be preempted by Federal law. The proposed amendment (Bill No. A4130, Jan. 31, 2007) would require certain motor vehicles to be manufactured with an outside unit magnification mirror or a convex mirror on the passenger's side. Based on the information you have provided and the analysis below, we believe that the proposed amendment in Bill No. A4130 would be preempted.

The National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §30101 et seq., expressly preempts state standards that differ from Federal motor vehicle safety standards. Section 30103(b) of the Act states, in relevant part:

When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

Federal Motor Vehicle Safety Standard (FMVSS) No. 111, Rearview mirrors (49 CFR §571.111) prescribes performance and location requirements for rear and side view mirrors on new passenger cars, multipurpose passenger vehicles (MPVs), trucks, buses, school buses and motorcycles.



Bill No. A4130 would amend subdivision 10-d of section 375 of the New York State Vehicle and Traffic Law by adding paragraph (d)(ii), which would require that “every new passenger-type motor vehicle, except a motorcycle, manufactured for sale in New York... be manufactured with an outside unit magnification mirror or a convex mirror on the passenger’s side....” New York’s definition of passenger-type motor vehicle encompasses “any motor vehicle with a seating capacity of not more than fifteen adults ... that is equipped with one or more rear windows.” The new (d)(ii) rearview mirror requirement added by New York Bill No. A4130 would thus apply to passenger vehicles that are subject to FMVSS No. 111: new passenger cars, MPVs, trucks, buses, and school buses that seat less than 16.

We have determined that by adding (d)(ii) to subdivision 10-d of section 375 of the New York State Vehicle and Traffic Law, New York would be regulating the same aspect of performance (rear/side field of view) regulated by FMVSS No. 111. Under the first sentence of 49 U.S.C. §30103(b), the state may prescribe a standard applicable to the same aspect of performance as the Federal standard only if the state standard is identical to FMVSS No. 111. The following discussion analyzes the Federal and state standards according to vehicle type (as defined under 49 CFR §571.3, Definitions).

Passenger Cars

S5.3 of FMVSS No. 111 mandates passenger side outside rearview mirrors only for passenger cars whose inside rearview mirrors do not meet the field of view requirements of S5.1.1. Bill No. A4130 would require cars to be manufactured with an outside unit magnification mirror or a convex mirror on the passenger’s side. Thus, Bill No. A4130 would require passenger side rearview mirrors on new passenger cars where FMVSS No. 111 does not. The proposed rearview mirror requirement in Bill No. A4130 would not be identical to the Federal requirement, and we would consider the proposed requirement (10-d(ii) in Bill No. A4130) to be preempted under 49 U.S.C. §30103(b).

MPVs, Trucks and Buses Up to 4,536 Kilograms (10,000 Pounds) GVWR

S6.1 of FMVSS No. 111 requires all MPVs, trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg)(10,000 pounds) or less (other than school buses) to either conform to the requirements for passenger cars (S5) or to have outside rearview mirrors on both sides. Thus, an MPV, truck or bus in this GVWR category that has an inside rearview mirror that complies with the field of view requirements of S5.1.1 is not required by FMVSS No. 111 to have a passenger-side outside rearview mirror. Some of these same motor vehicles are included in the definition of “passenger-type motor vehicle” in subdivision 10-d, and thus Bill No. A4130 would require an MPV, truck or bus in this GVWR category to have a passenger side rearview mirror where FMVSS No. 111 does not. Because the rearview mirror requirement in Bill No. A4130 is not identical to the FMVSS No. 111 requirements for MPVs, trucks or buses in this GVWR category, the proposed 10-d(ii) in Bill No. A4130 would be preempted under 49 U.S.C. §30103(b).

MPVs, Trucks and Buses Greater Than 4,536 Kilograms (10,000 Pounds) GVWR

S7 of FMVSS No. 111 applies to MPVs and trucks with a GVWR of more than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR greater than

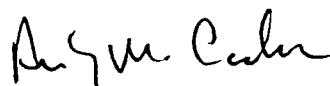
4,536 kg. S8 applies to MPVs and trucks with a GVWR of 11,340 kg or more. These two sections of FMVSS No. 111 specify that such vehicles "shall have outside mirrors of unit magnification, each with not less than 323 cm² of reflective surface, installed with stable supports on both sides of the vehicle." The rearview mirror requirement added by Bill No. A4130 (paragraph 10-d(ii)) specifies that these vehicles must be manufactured with an outside unit magnification mirror or a convex mirror on the passenger's side. Because New York would be regulating the same aspect of performance (rear/side field of view) regulated by FMVSS No. 111, the state standard must be identical to the Federal standard. Because the rearview mirror requirement in Bill No. A4130 is not identical to the FMVSS No. 111 requirements for this category of motor vehicles, the proposed 10-d(ii) in Bill No. A4130 would be preempted under 49 U.S.C. §30103(b).

School Buses That Seat Less Than 16

S9 of FMVSS No. 111 applies to school buses, and specifies a comprehensive mirror system for school buses. Because New York would be regulating the same aspect of performance (rear/side field of view) regulated by FMVSS No. 111, the nonidentical state rearview mirror standard proposed by Bill No. A4130 would be preempted under 49 U.S.C. § 30103(b). Under the second sentence of §30103(b) New York may have a state standard for mirrors on vehicles procured for the state's own use (e.g., public school buses) that imposes a higher level of safety than FMVSS No. 111. However, we are unable to determine from your letter whether the New York state rearview mirror standard proposed in Bill No. A4130 would prescribe a higher performance requirement than the comprehensive mirror system for school buses under FMVSS No. 111.

I hope this information is helpful. If you have any further questions, please do not hesitate to contact Sarah Alves of my staff at (202) 366-2992.

Sincerely yours,



Anthony M. Cooke
Chief Counsel