

1984 WL 249790 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1984

**\*1 RE: Oversized Trailers—Automobile Transporters**

Colonel P. L. Meek  
Director  
Law Enforcement Division  
S. C. Department of Highways and Public Transportation  
Post Office Box 191  
Columbia, South Carolina 29202

Dear Colonel Meek:

You have requested the opinion of this office as to whether a section of the South Carolina Code of Laws is in conflict with a provision of the Code of Federal Regulations and if so, which law prevails.

[Section 56-5-4070 of the CODE OF LAWS OF SOUTH CAROLINA \(Cum. Supp. 1983\)](#) establishes the maximum length for automobile transporters in this State and provides that the bumpers and load shall be included in the measurement of such vehicles. [Transporters normally cannot exceed sixty (60) feet in length, with those exceeding sixty (60) feet (including bumpers and load) requiring special permits and being restricted to only daylight driving.]

Section 658.13(d) of the Code of Federal Regulations <sup>1</sup> declares that automobile transporters are considered specialized equipment and that front and rear overhang are not included in the measurement of transporters. [The regulation also provides that no state shall impose an overall length limit of less than sixty-five (65) feet on automobile transporters.]

As the state law includes bumpers and load in the measurement of a transporter while the Federal Regulation excludes overhang, you have asked whether there is a conflict between these two provisions. ‘Load’ and ‘overhang’ may be synonymous when used in this context, thus there is the potential for conflict between our State Law and the Federal Regulation.

In answer to your query as to which law prevails in the event of a conflict, resort is made to [Article VI, Clause 2 of the United States Constitution](#) which states:

‘This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.’

Though there is no express mention of Federal Regulations, federal and state courts have held this clause applicable to regulations promulgated under a proper delegation by Congress. Section 658.13 was promulgated by the Secretary of Transportation pursuant to authority delegated to him by Congress in a provision of the Surface Transportation Assistance Act of 1982. <sup>2</sup> Absent a judicial ruling to the contrary, it is assumed that § 658.13 has been correctly promulgated under a proper delegation by Congress. Therefore, this regulation has the force and effect of federal law and becomes the supreme law of the land. [Fidelity Federal Savings and Loan Association v. de la Cuesta](#), 458 U.S. 141, 73 L.Ed.2d 664, 102 S.Ct. 3014 (1982) and [Ervin v. Conn.](#), 225 N.C. 267, 34 S.E.2d 402 (1945). See, op. Atty. Gen., April 7, 1983.

\*2 Though courts will not assume an intent on the part of an administrator to preempt a state statute; preemption is compelled where the Federal Regulation explicitly states that it is to be superior to state law, or to the extent it actually conflicts with state law. Fidelity, supra. Section 658.13(d) is explicit that length provisions are to be exclusive of front and rear overhang, and where this conflicts with § 56-5-4070, the federal regulation must be given priority. The length provisions of § 658.13 also make it clear that the law of the state is to be subordinate to the regulations, thus the intent of the Secretary to preempt state law is clear.

The only question open for review is whether the Secretary has exceeded his statutory authority or has acted arbitrarily. Fidelity, supra. The Surface Transportation Assistance Act makes it clear that Congress meant to allow for longer vehicles on the Interstates and on some Federal-Aid Primary Roads and that where this conflicted with state law, the federal law would prevail. Given Congress' intent as evidenced by the Act, it is apparent the Secretary of Transportation has not exceeded his statutory authority nor acted arbitrarily.

In summary, it is the opinion of this office that § 658.13 prevails over state law when there is a conflict between them and that in accordance with § 658.13, when measuring the length of automobile transporters, front and rear overhang should not be included in the measurement.

Sincerely,

James P. Hudson  
Staff Attorney

Footnotes

<sup>1</sup> 49 C.F.R. § 658.13 (1984).

<sup>2</sup> 49 U.S.C.A. § 2311(d). The Secretary is authorized to establish rules to implement the provisions of this section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) . . .

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