

NBSAC 100 Minutes on Ryan's Law Preemption

Excerpts from the official minutes of the 100th Meeting of the National Boating Safety Advisory Council held Thursday October 18 - Saturday October 20, 2018 at the U.S. Coast Guard Training Facility, Cape May, New Jersey. These clips were assembled by PropellerSafety.com

100th Meeting of the National Boating Safety Advisory Council

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Preemption has become a significant issue due, in part, to a law called Ryan's Law. This law resulted from an incident involving a 12-year-old boy in New York who was ejected from a pontoon boat and fatally injured by its propeller. The law is scheduled to become effective as of 29 October 2018.

The key elements of federal law guiding preemption (46 U.S.C. 4306) are that unless permitted a state or political subdivision may not establish a law or regulation that is not identical to a regulation as prescribed under 46 U.S.C. 4302, which is the Coast Guard's authority to enact regulations under this title. Congress inserted the preemption clause to prevent the placement of additional requirements beyond what is already required by federal regulation. Preemption allows boaters to freely operate their vessels between jurisdictions without having to be concerned about requirement changes between borders.

Ryan's Law requires propeller guards on instructional vessels, defined as a vessel used to educate minors about marine navigation and safety in a formal setting. This broad definition poses a concern that the law will apply to both recreational and commercial vessels such as uninspected passenger vessels. These concerns have prompted a letter to exert preemption. A study on propeller guards has shown possible negative effects, which led the Coast Guard to conclude it should not add a regulation to require propeller guards. While the number of deaths and injuries related to propeller strikes remains significant, there is no evidence to show that propeller guards would prevent fatalities in cases where a vessel is moving at speeds higher than 10 miles per hour, which is the circumstance under which 80 percent of injuries occur. Preemption does apply to Ryan's Law. Preemption also applied to a law enacted in Minnesota, named Sophia Law (addressed later in this section).

Mr. Klein asked how the Coast Guard handles a non-compliant law, adding that the states also face a similar issue. Mr. Gifford said coordination between the Coast Guard and the states is necessary. He added that informing the Boating Law Administrator (BLA) and possibly a county board to express concerns will hopefully lead to less resistance regarding preemption. He expects there may be some resistance in New York, with regard to Ryan's Law, because the law is already on the books.

Mr. Klein asked for clarification, saying his understanding is that the offending jurisdiction is made aware the law is flawed and anyone who is cited for it would be able to appeal it. Mr. Gifford said there were very few cases where they have received an ultimate response. There are options for the state since propeller guards are not prohibited. If Suffolk County wants to incentivize propeller guards, they are welcome to do so; however, it is necessary for operators to understand the guards are not a guarantee against injuries and the propeller guards may negatively impact maneuverability of the vessel.

Mr. Jones asked, with regard to the preemption law, whether the state would be held accountable and if the BLA would assist in the matter. He inquired whether the Coast Guard has authority over the local jurisdictions. Mr. Burgess stated that under the agreement of the grant, the state is responsible for notifying the Coast Guard of legislation. The Coast Guard is conducting research to determine whether this ties to the grant program. While compliance with the grant program is required, when it concerns a

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political subdivision, they look at whether the state does 'pass-through' to the counties and if that impacts the counties' ability to get grant money.

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The fact that these laws have proper names shows they reflect the lessons resulting from a loss of human life and, therefore, carry an emotional charge. This presents an additional challenge of trying to maintain preemption while also respecting the memory of those who are behind the need for the laws. The Coast Guard is trying to be proactive with jurisdictions in question when they become aware of the laws.

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Finally, he referred to the propeller guard requirement in Suffolk County, New York that happened earlier this year. The Coast Guard will assert preemption, but has yet to notify them of such.

When the Coast Guard asserts preemption they tell the state they cannot do what they implemented and it is up to the state to decide whether to change their law. He said they do not believe the Illinois and Suffolk County laws would survive judicial review. Therefore, if someone were cited and opted to take it to court where they asserted a federal preemption defense, they would likely win.

The Federal Boat Safety Act created the Recreational Boating Safety (RBS) program, it designated the Coast Guard as the national coordinator, and it declared that it is Congress's policy to encourage greater and continuing uniformity of boating laws and regulations. Therefore, he said the Coast Guard's ultimate goal is also uniformity. He said they will only use the exemption authority sparingly as they feel that providing exemptions for preemption works against the policy of encouraging uniformity.

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Mr. Adey suggested they create a group, possibly through the BAE Subcommittee, to discuss any law proposed by a state that deals with boat equipment. The group would be on standby until needed, report to the BAE Subcommittee, and include a representative from NASBLA, NMMA, ABYC, the Coast Guard, and anyone else who feels materially affected by the proposed law. He offered that the BAE Subcommittee could propose an Action Item to create such a group.

The End