

February 4, 2010

The Honorable Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Opposition to Proposed Exemptions to the Federal Aviation Administration
Authorization Act (FAAAA)

Dear Secretary LaHood:

On behalf of the undersigned national and state associations representing importers, exporters, and the logistics industries and service providers that support them, we are writing to you about an important issue that could affect the competitiveness and efficiency of U.S. ports. Several major U.S. ports, including the Ports of Los Angeles, Long Beach and Seattle, have launched Clean Truck Programs aimed at reducing diesel emissions of trucks entering the port terminals. We strongly support the goals and most elements of these Clean Truck Programs. However some organizations are now seeking to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA) under the guise of the clean trucks initiatives. **We urge you and the Administration to oppose these efforts as we believe they will be detrimental to interstate commerce and U.S. competitiveness.**

There is currently a campaign underway to persuade Congress to grant to local governments the ability to regulate the trucking industry at ports to address environmental and port security matters, and thereby eliminate the federal preemption of state and local regulation of foreign and interstate commerce. While we strongly support efforts to improve air quality and port security in and around America's ports, the effort to undermine federal preemption of interstate commerce is an attempt to overturn losses in the federal courts restricting local regulation of truck drayage services. If successful, these efforts will not improve air quality or port security in and around the nation's ports, but will re-impose a fragmented, local, patchwork regulatory structure on foreign and interstate commerce, contrary to the U.S. Constitution and acts of Congress.

The members of the undersigned national associations move a substantial amount of the nation's international commerce through America's marine ports and along the surface transportation network of roads and rails. The harbor trucking industry is an integral component in the supply chains of U.S. industry that helps our nation's exporters to reach markets overseas and replenish store shelves and assembly lines here in the United States.

Our member companies have a vested interest in making sure that the harbor trucking industry operates safely, efficiently and in an environmentally responsible manner. In fact, many of our members are actively working with transportation providers to replace as quickly as possible the older harbor trucks serving marine terminals around the country with highly innovative clean equipment.

We have seen great success at the Ports of Los Angeles and Long Beach who have achieved an estimated 80 percent reduction in diesel emissions under their current program, two years ahead of schedule. This result has been achieved without changes in federal law. In fact, the American Association of Port Authorities (AAPA) recently passed a policy position that states that the AAPA does not believe there is a need at this time to amend the Federal Aviation Administration Authorization Act because of the success of current clean truck programs that have been implemented without a change in the law.

In 2007, the Port of Los Angeles' Clean Truck Program included a provision that would have banned any harbor trucking company from using independent owner-operator drivers, in favor of employee drivers and certain other onerous economic-based regulations. These restrictions, principally advocated by the International Brotherhood of Teamsters, are specifically designed to eliminate competition from small independent businesses in favor of companies that the Teamsters believe could be more easily organized.

In 2008, the American Trucking Associations (ATA) filed suit against the Port of Los Angeles and the Port of Long Beach¹ under the legal argument that the truck concession portion of the Clean Trucks Program is preempted by federal law regulating rates, routes and service under the FAAAA. The ATA only challenged the concession provision and **not** the program components that contribute to air quality improvements.

The ATA requested a preliminary injunction which was granted by both the U.S. District Court for the Central District of California and was affirmed by the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and services" and thus were preempted by the FAAAA.

The Port of Los Angeles, the NRDC, and the Teamsters seek to expand the exceptions to federal preemption legislatively in order to accomplish by statute an objective that the Courts found to be currently unlawful. In fact, the Court of Appeals recognized that federal preemption of interstate trucking services was designed to prevent a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles' concession plan.

¹ The Port of Long Beach adopted a similar Clean Truck Program, including the requirement for drayage operators to sign concession contracts with the port; however, the Long Beach program did not ban independent owner operators from serving that port.

The argument that port trucking services should not be subject to federal preemption in order to improve air quality is fallacious, and is based on motives unrelated to achieving cleaner air around the ports. The Port of Long Beach has since settled the lawsuit with the ATA. According to Port of Long Beach Executive Director Richard Steinke: “[t]he settlement . . . clears the way for the Port and the trucking industry to move forward, together, with a program that has been highly successful in reducing air pollution.” He went on to further say: “The NRDC’s real objection to our program has nothing to do with clean air. By aligning itself with the Teamsters, who have been very public about their campaign to unionize port truckers nationwide, the NRDC is pursuing an agenda beyond air quality.”

We believe that the environment, security and efficiency of our nation's transportation system including trucking at our nation's ports are best served by maintaining the long-standing authority set forth in the FAAAA. We thank you for considering our concerns. Please feel free to contact us with any questions or concerns.

Sincerely,

Agriculture Transportation Coalition
American Apparel and Footwear Association
American Import Shippers Assoc. Inc.
Clean Truck Coalition
Coalition of New England Companies for Trade
Columbia River Customs Brokers and Forwarders Assn.
Custom Brokers & Forwarders Assn. of Northern California
Customs Brokers and Freight Forwarders Assn of Washington State
Fashion Accessories Shippers Association
Footwear Distributors and Retailers Association
Harbor Truckers for Sustainable Future LA/LB Port
International Warehouse Logistics Association
Los Angeles Customs Brokers & Freight Forwarders Assn.
NASSTRAC, Inc.
National Association of Manufacturers
National Association of Waterfront Employers
National Industrial Transportation League
National Retail Federation
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns.
Pacific Northwest Asia Shippers Association
Retail Industry Leaders Association
San Diego Customs Brokers Assn.
The Health & Personal Care Logistics Conference, Inc.
The Waterfront Coalition
Travel Goods Association
United States Council for International Business
U.S. Association of Importers of Textiles and Apparel

U.S. Chamber of Commerce
Washington State Potato Commission
West State Alliance, Oakland
World Shipping Council

CC: Roy Kienitz, Under Secretary for Policy
Polly Trottenberg, Assistant Secretary for Transportation Policy
Victor Mendez, Administrator, Federal Highway Administration
Anne Ferro, Administrator, Federal Motor Carrier Safety Administration
David Matsuda, Acting Administrator, Maritime Administration