

CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

May 5, 2010

The Honorable Peter DeFazio
Chairman
House Committee on Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Duncan
Ranking Member
House Committee Transportation & Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, D.C. 20515

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

Dear Chairman DeFazio and Ranking Member Duncan:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we thank you for holding today's hearing "*Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach.*" We applaud the great success that these ports have achieved in a short time to implement their Clean Truck Programs. This success was achieved without changes to federal regulations. As such, we urge you to reject efforts to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA). Any such change would only serve to negatively impact the success that these ports have achieved to date.

As members of the Subcommittee are aware, several major U.S. ports, including the Ports of Los Angeles, Long Beach, Seattle, Tacoma and the Port Authority of New York and New Jersey have launched Clean Truck Programs aimed at reducing diesel emissions of trucks entering the ports' terminals. We strongly support the goals and elements of these Clean Truck Programs as implemented. However some organizations are now seeking to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA) under a thinly veiled guise as necessary to improve air quality and other environmental goals. These changes, if enacted, could unfairly force out of the industry many hard working small businesses responsible for moving much of the nation's international commerce. We

urge you to oppose these efforts as we believe they will be detrimental to interstate commerce and U.S. competitiveness.

The undersigned members of the Clean and Sustainable Transportation Coalition represent exporters, importers, and the logistics industries and transportation service providers that support them. The members of these state and national associations move a substantial volume of the nation's exports and imports through marine terminals and are dedicated to ensuring that the port trucking industry operates in an environmentally responsible and sustainable manner. Many of the undersigned groups endorsed the goals of the Clean Truck Program enacted by the Ports of Los Angeles and Long Beach to quickly turn over the fleet of aging harbor trucks in America's largest seaport. In fact, some members of our group have invested considerable amounts of time and money to speed the transition to cleaner trucks in those ports. However, the Port of Los Angeles remains intent on moving forward with a concession program tied to its Clean Truck Program that would mandate that only harbor truck drivers operating as employees of trucking firms may enter marine terminals in the nation's largest seaport. It is our view that this mandate has no impact on tailpipe emissions. Industry opposes the Port of Los Angeles' concession requirement as it will not improve air quality, safety or security while unfairly restructuring the harbor trucking industry with the effect of limiting competition and increasing the cost of goods movement.

A campaign is underway to persuade Congress to grant to local governments the ability to regulate the port trucking industry to address environmental and port security matters. Present law, as outlined in the FAAAA, pre-empts state and local regulation of trucking in foreign and interstate commerce, except as it regards safety. We strongly support efforts to improve air quality and port security in and around America's ports. However, the effort to remove preemption of state and local interference in 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 security at our nation's ports and may result in a return to a fragmented patchwork of inconsistent regulations over foreign and interstate commerce, contrary to the U.S. Constitution, acts of Congress, and common sense.

There are many false and inaccurate statements being made about the ability of southern California's ports to enforce the Clean Trucks Program. Both the Ports of Los Angeles and Long Beach have the ability to enforce their plans and are currently preventing older, dirtier trucks from entering the port facilities. A concession plan is not required to enforce this ban. In fact, since these plans have been implemented by the ports, over 7,000 trucks have been replaced to meet or exceed 2007 U.S. EPA emissions rules. As both ports acknowledge, the Clean Trucks Program has reduced air emissions by 80%, a full two years ahead of schedule. Over 80% of the cargo entering or leaving the ports are doing so on new clean trucks. Other ports around the country are implementing similar clean trucks programs to reduce harbor truck emissions without need for a truck concession program.

In fact, because of this great success, 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 FAAAA because of the success of current clean truck programs that have been implemented without a change in the law.

There are also a number of misrepresentations about the current lawsuit between the American Trucking Associations and the Port of Los Angeles. 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 mandating that drivers be employees and imposing certain other onerous economic-based regulations. These restrictions, principally advocated by the International Brotherhood of Teamsters and Change to Win, are specifically designed to eliminate competition from small independent businesses in favor of companies that the Teamsters believe could be 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 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 service" and thus were preempted by the FAAAA.

The overwhelming success of these programs in major seaports around the country is a testament to the fact that small business can be compatible with clean air initiatives at ports. It is our hope that members Congress will recognize and support the enormous investment in innovative green technologies made by industry stakeholders including the many small businesses that make up the harbor trucking industry in local markets across the country.

It is unfortunate that some environmental groups and other interests are diminishing these important investments in favor of radical and unfair changes to the make-up of the port drayage industry in the name of clean air. The proposed amendment to the FAAAA is designed to ban independent harbor truckers from moving cargo through seaports to the benefit of larger trucking companies. If enacted into law, the amendment could void these enormous investments made by many small businesses and put them out of work. In addition the implications of the proposed amendment could lead to additional driver prohibitions at other public facilities across the country.

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.

Those supporting the amendment claim that the small businesses that have already invested in state of the art clean trucks do not have the wherewithal to adequately maintain and operate the equipment. This incorrect belief assumes that forcing independent truckers out of the industry somehow improves highway safety and port security. However, well-established federal and state mechanisms are in place at seaports and elsewhere to guarantee that only well maintained equipment operate along roads and highways. Congress also put in place a multi-layered system to secure ports including the credentialing of truck drivers.

Companies and associations represented by the undersigned have collaborated with ports around the country. We are ready to work with other ports to address emissions and other issues of importance. However, we do not believe that any change to current law regarding trucking as codified in the FAAAA is needed to achieve these ends. Instead, it is a distraction. In fact, such controversial changes could radically and quite unfairly change the industry by forcing many small businesses that have made environmentally responsible investments to close their doors. We urge you to oppose efforts to amend the FAAAA.

Sincerely,

Agriculture Transportation Coalition
American Apparel & Footwear Association
American Association of Exporters and Importers
American Import Shipper Association
California Business Properties Association
California Retailers Association
American Trucking Associations
California Trucking Association
Clean Truck Coalition, LLC
CONNECT - 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
Express Delivery and Logistics Association
Fashion Accessories Shippers Association
Footwear Distributors and Retailers of America
Harbor Truckers for a Sustainable Future
International Warehouse Logistics Association
International Wood Products Association
Los Angeles Area Chamber of Commerce
Los Angeles Customs Brokers & Freight Forwarders Assn.
NASSTRAC, Inc.
NAIOP Inland Empire Chapter
NAIOP SoCal Commercial Real Estate Development Association
National Association of Manufacturers
National Association of Waterfront Employers

National Customs Brokers and Forwarders Association of America
National Retail Federation
New Jersey Retail Merchants Association
New York Shipping Association
New York State Motor Trucking Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Pacific Merchant Shipping Association
Retail Industry Leaders Association
San Diego Customs Brokers Assn.
The Health & Personal Care Logistics Conference, Inc.
The National Industrial Transportation League
The Waterfront Coalition
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
U.S. Chamber of Commerce
United States Council for International Business
West State Alliance, Oakland
World Shipping Council