



334 N. Euclid Avenue • Upland, CA 91786  
(909) 982-9898 • Fax (909) 985-2348  
[www.westrk.org](http://www.westrk.org)

October 17, 2016

Joseph Solomey, Senior Assistant Chief Counsel

Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
West Building, Ground Floor  
Room W12-140  
1200 New Jersey Ave., S.E.  
Washington D.C. 20590

RE: Docket No. PHMSA-2016-0097

Dear Mr. Solomey,

The *Western States Trucking Association* (“WSTA”)<sup>1</sup> submits these comments related to a public notice and invitation to comment published in the Federal Register (Vol.81, No. 171, Friday, September 2, 2016, P. 60777) by the *Pipeline and Hazardous Materials Safety Administration* (“PHMSA”).

The notice concerns a petition filed by the *National Tank Truck Carriers* (“NTTC”) requesting that PHMSA make a determination that California meal and rest break requirements, as applied to hazardous materials carriers, or alternatively, a subset thereof, are preempted under Federal hazardous materials transportation law and the Hazardous Materials Regulations (“HMRs”).

The WSTA urges PHMSA to grant the petition filed by the NTTC and preempt California from enforcing its own unique meal and rest break rules on drivers transporting hazardous materials within the state of California.

### **California meal and rest breaks should not apply to federally regulated motor carriers**

The HMRs contain a requirement that hazardous materials shipments by highway “be transported without unnecessary delay.” Although the health and safety of the driver would be a reasonable reason to delay, congress has delegated the responsibility to promulgate regulations ensuring truck drivers have adequate rest breaks to the U.S. Department of Transportation’s modal agency, the Federal Motor Carrier Safety Administration (“FMCSA”). PHMSA adopted those hours-of-service (“HOS”) regulations into the HMRs.

In the NTTC petition and various industry comments already filed to the docket, they have accurately described the federal regulatory scheme concerning hazardous materials shipments and the applicable federal HOS regulations. We will focus our comments on the difficulty of placing both motor carriers and

---

<sup>1</sup> The Western States Trucking Association is the oldest, independent nonprofit trucking association in the U.S. founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and affiliated motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations with most operation focused in the western U.S.

**INTEGRITY ◊ PROFESSIONALISM ◊ EDUCATION ◊ SAFETY**

drivers in an HOS straightjacket and the inability for drivers to easily comply with California's requirements – contrary to assertions otherwise by the state of California.

Because PHMSA's authority over hazardous materials transport extends to both interstate and intrastate hazmat shipments, all drivers transporting hazardous materials must adhere to the federal HOS requirements. The HMRs preempt any state-issued requirement that "is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law [or] a regulation issued under the hazardous material transportation law."<sup>2</sup>

Allowing California to apply its own unique meal and rest break requirements on drivers required to follow federal HOS opens the possibility of a Pandora's Box of competing regulatory requirements by states superseding federal HOS requirements. This is not trivial – especially involving hazardous material shipments.

In the decision issued on July 9, 2014 by the United States Court of Appeals for the Ninth Circuit in *Dilts v. Penske*, which focused on the issue of federal preemption, District Judge Zouhary wrote a concurring but separate opinion that stated:

*I write separately to emphasize one aspect of this case. As the Majority notes, Penske bears the burden of proof on its preemption defense. See supra, at 22. But Penske did not offer specific evidence of (for example) the actual effects of the California law on Penske's own routes or services. Instead, Penske relied on a general hypothetical likelihood that a Penske delivery driver, with limited flexibility in traveling from point A to point B, is further restricted to certain routes that would allow a driver to park his or her truck and enter "off-duty" status.*

The judge invited a more thorough explanation of the issue which the WSTA believes is the core reason California needs to be preempted – the inability of a truck driver of class 7 and 8 trucks to "just pull-over" or even find suitable truck parking in order to comply with an inflexible state meal and rest break requirement.

While *Dilts v. Penske* involved local delivery drivers operating smaller two axle delivery trucks that conceivably could pull into the parking lot of a convenience store or fast food restaurant in order to comply with California's meal and rest break requirements, the same is not true for drivers in larger five or six axle commercial motor vehicles weighing as much as 80,000 pounds.

The shortage of available truck parking is a well-documented national issue having prompted even congressional action.

In 2012 congress included Jason's Law<sup>3</sup> in H.R. 4348 ("Moving Ahead for Progress in the 21st Century Act" or "MAP-21") that states (a) in general –

*It is the sense of Congress that it is a national priority to address projects under this section for the shortage of long-term parking for commercial motor vehicles on the National Highway System to improve the safety of motorized and nonmotorized users and for commercial motor vehicle operators.*

Jason's Law required U.S. DOT to conduct a survey of available truck parking facilities in each state and the legislation contained provisions to pay for more rest areas for truck drivers.

---

<sup>2</sup> 49 C.F.R. 107.202(b)(2)

<sup>3</sup> <https://www.govtrack.us/congress/bills/112/hr4348/text>

FMCSA has had its “SmartPark” initiative<sup>4</sup> that intended to demonstrate a technology for providing information in real time on truck parking availability to truckers on the road.

The Federal Highway Administration (“FHWA”) Office of Operations has an entire website page dedicated to the truck parking issue<sup>5</sup> highlighting the shortage as a “**national safety concern.**” Additionally, FHWA is the lead in the newly formed National Coalition for Truck Parking.<sup>6</sup>

Individual states such as Minnesota have conducted studies<sup>7</sup> indicating the severity of the available parking spaces for trucks.

In sum, the ability of truck drivers to simply pull over or find a safe place to park is not as easy as supporters of California’s continued interference in the HOS of federally regulated drivers claim. The issue is further compounded when hazardous material shipments are involved. Depending on the commodity being transported, safe haven parking is even in shorter supply than general truck parking.

The California Department of Motor Vehicles website warns drivers transporting hazmat shipments, “You may park a placarded vehicle (not laden with explosives) within five feet of the traveled part of the road only if your work requires it. [But] Do so only briefly. Someone must always watch the vehicle when parked on a public roadway or shoulder.” The driver can’t legally just pull over to “take a break,” nor would rational individuals suggest someone transporting hazardous materials unnecessarily park alongside a busy highway simply because of an arbitrary regulation that was designed for employees working in more structured environments where factors beyond anyone’s ability to control don’t come into play on a routine basis. They do in trucking, road and weather conditions, shipper/receiver delays, breakdowns of equipment, randomized vehicle inspections by law enforcement, etc.

As an example of a factor beyond any driver or employers ability to control; California has the nation’s most congested highways and while traffic may flow smoothly on one day, any number of events can cause multi-hour delays the next day. The best intentions and route planning goes out the window, yet employers and drivers are supposed to somehow foresee every eventuality and schedule accordingly? That is asking the impossible and proponents of California enforcing its own meal and rest break requirements know it. This isn’t about “safety,” it is about placating organized labor and trial attorneys and victimizing the very people “they” purport to represent – the driver who is being placed in an untenable position. A driver must now comply with the ridiculous or face disciplinary action as employers are forced to protect themselves from ridiculous lawsuits. This isn’t about “safety” as they purport, but unfair enrichment through Catch-22 rules.

If the state of California believes the simple answer for an employer is to just “hire a co-driver” so that another driver can take a break, that strikes at the very heart of the prohibition found in the Federal Aviation Administration Authorization Act of a State attempting to enforce a law, rule, standard, or other provisions affecting the price, route, or service of ANY motor carrier. Co-drivers increase transportation costs – period.

### **Federal exemptions from break requirements**

---

<sup>4</sup> <https://www.fmcsa.dot.gov/research-and-analysis/technology/smartpark-real-time-parking-availability>

<sup>5</sup> [http://www.ops.fhwa.dot.gov/Freight/infrastructure/truck\\_parking/index.htm](http://www.ops.fhwa.dot.gov/Freight/infrastructure/truck_parking/index.htm)

<sup>6</sup> [http://ops.fhwa.dot.gov/freight/infrastructure/truck\\_parking/flyer/index.htm](http://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/flyer/index.htm)

<sup>7</sup> [http://www.dot.state.mn.us/ofrw/PDF/MN\\_TrkParkFnlRpt.pdf](http://www.dot.state.mn.us/ofrw/PDF/MN_TrkParkFnlRpt.pdf)

The WSTA believe it would be totally consistent for PHMSA to grant this petition in light of other federal determinations related to complying with its own 30-minute break requirement (393(a) (3) (ii). Specifically, all drivers utilizing the HOS short-haul exemption (395.1(e) are not required to comply with the half-hour break requirement. Numerous petitions for exemption from the federal break requirement have been granted for valid reasons, namely the inflexibility of making certain drivers comply with rigid work rules that don't give them the flexibility they desire and need to perform their jobs.

Proponents of allowing California's meal and rest break requirements to apply to federally regulated drivers hauling hazardous materials make specious and unprovable claims that employers "force drivers to work without breaks," thus necessitating state interference in a federal issue. Saying this is so is much different than actually providing evidence that this is a widespread industry practice – which it is not.

### Conclusion

Opponents of federal preemption related to state mandated meal and rest breaks have trivialized the ability of a truck driver to comply with both state and federal rules. This has become a political cause for reasons having nothing to do with highway safety, contrary to the pronouncements from supporters of California being allowed to interfere with federal authority over certain aspects of our transportation system. PHMSA should grant the NTTC petition and preempt the California meal and rest break requirements as applied to drivers transporting hazardous materials.

Sincerely,



Joseph Rajkovacz

Director of Governmental Affairs &  
Communications

Western States Trucking Association  
[joe@westrk.org](mailto:joe@westrk.org)

I certify that copies of this comment have been sent to Mr. Prasad Sharma and Ms. Kamala Harris at the addresses specified in the Federal Register, reprinted below:

Prasad Sharma, Esq.  
Scopelitis, Garvin, Light, Hanson & Feary  
1850 M St., NW, Ste. 280  
Washington, DC 20036

Kamala D. Harris  
Attorney General  
Office of the Attorney General  
1300 "I" St.  
Sacramento, CA 95814-2919



October 17, 2016

---

Signature

---

Date

**INTEGRITY ♦ PROFESSIONALISM ♦ EDUCATION ♦ SAFETY**