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July 9, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

The Honorable Raymond Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Application by the Western States Trucking Association for a Determination that California's meal and rest break requirements as applied to federally regulated truck drivers transporting oversized/overweight permit loads is preempted by 49 U.S.C. § 14501(c)(1)

Dear Secretary Chao and Administrator Martinez:

The *Western States Trucking Association* (WSTA) hereby petitions the U.S. Department of Transportation (US DOT) for a determination that California's unique meal and rest break rules as applied to drivers of oversized/overweight (OS/OW) loads whose hours-of-service (HOS) are federally regulated be preempted.

Founded in 1941, the *WSTA* is the nation's oldest, independent, nonprofit trucking association representing over 1,000 motor carriers with another 5,000 allied motor carriers primarily operating on the west coast. The *WSTA* advocates on behalf of our owner-operator, fleet, and broker members for sensible legislation and regulations that affect their businesses. Our members are engaged in virtually every mode of trucking including; construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations. Importantly and related to this petition, we have members who transport loads that must move under special permits within California and whose driver HOS are regulated by the *US Secretary of Transportation*, not state HOS regulations.

BACKGROUND

Numerous *WSTA* members transport OS/OW on California highways. These types of shipments require unique permits to operate on-highway and sometimes will require police escort. Many of the loads transported by our members originate at California federal military bases or ports for transport to and from. As such, the motor carriers must have federal operating authority and their drivers must operate under federal HOS regulations since the shipments are within the stream of interstate/foreign commerce.

On November 24, 2014 the *Federal Motor Carrier Safety Administration* (FMCSA) published in the Federal Register a Notice of an application for exemption from the *Specialized Carriers & Rigging Association* (SC&RA) requesting an exemption from the federal 30-minute break requirement for specialized carriers transporting OS/OW loads.¹

¹ See - <https://www.gpo.gov/fdsys/pkg/FR-2014-11-24/pdf/2014-27743.pdf>

On June 18, 2015 after an open public comment period in which the WSTA (then named the *California Construction Trucking Association*) filed comments supportive of the exemption request,² FMCSA approved the petition. Importantly in granting the exemption request, FMCSA cited a safety related rationale for approving the exemption:

*“FMCSA has evaluated SC&RA’s application and the public comments and decided to grant the exemption. The arguments against the exemption are not trivial... Nonetheless, finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences, before an inattentive driver can correct his mistake.”*³ (Emphasis added).

The exemption from the federal 30-minute break requirement for drivers of OS/OW is in place to 2020.

Our petition for a determination to deny California the ability to enforce its meal and rest break requirements on drivers transporting OS/OW within the state who operate under federal HOS rules is based on the safety rationale used by FMCSA in granting the SC&RA exemption from the federal 30-minute rest break requirement.

Drivers of OS/OW shipment within California are effectively barred from taking advantage of the federal exemption because they must still comply with a state requirement mandating meal and rest break times. Negative impacts to highway safety are precisely the problem with allowing California to insist on compliance with its meal and rest break requirements. The very point made by FMCSA that trucks parking alongside a highway to comply with mandatory break times are unsafe “frequently with fatal consequences” is why we believe that California must be preempted from enforcing its own meal and break requirements on drivers of OS/OW shipments.

CALIFORNIA MEAL AND REST BREAK REQUIREMENTS

The California Industrial Welfare Commission publishes wage orders for specific industries. Wage order No. 9-2001 specifically applies to the transportation industry.⁴ California has been unique nationally in enforcing its wages; hour and working conditions requirements on federally regulated motor carriers engaged in interstate commerce. The application of these workplace rules to drivers transporting OS/OW loads effectively renders the exemption from the federal 30-minute break requirement moot since drivers must now comply with an even more onerous subset of rules that directly impact their HOS. Worse, the application of California rules in-place of complying with federal HOS for OS/OW drivers can have fatal consequences as described in FMCSA’s justification for granting an exemption from the federal 30-minute break requirement.

The issue of California being able to apply its own unique subset of workplace rules to truck drivers has been the subject of endless litigation and congressional attempts to clarify federal law. Much of this came to the fore after the *United States Court of Appeals for the Ninth Circuit* issued a decision on March 3, 2014 in a legal case titled *Dilts v. Penske Logistics, Inc.*, that found California’s meal and rest break requirements were not federally preempted by 49 U.S.C. § 14501(c)(1)⁵ which is intended to preempt states from enforcing laws pertaining to “prices, routes and services” of motor carriers.

² See - <https://www.regulations.gov/document?D=FMCSA-2014-0420-0078>

³ See - <https://www.gpo.gov/fdsys/pkg/FR-2015-06-18/pdf/2015-15018.pdf>

⁴ See - <https://www.dir.ca.gov/iwc/IWCArticle9.pdf>, specifically, sections 11 and 12.

⁵ See - <https://www.gpo.gov/fdsys/pkg/FR-2015-06-18/pdf/2015-15018.pdf>

The court invited the US DOT to file an *amicus* brief in the case to which the US DOT submitted a sixty eight page brief.⁶ US DOT addressed only three questions in its filed brief:

- 1- Whether the FAAA Act preempts the California meal and rest break law as applied to motor carriers.
- 2- Whether the Federal Motor Carrier Safety Administration continues to adhere to a prior administrative ruling that the California law is not a law regulating commercial motor vehicle safety.
- 3- Whether the federal government's views on preemption, as set forth in this *amicus* brief, should be accorded deference.

The response by *FMCSA* to each of the questions ultimately was a significant factor in the final decision rendered by the *Ninth Circuit*.

In its brief *FMCSA* maintained a consistency of its previously made determination related to the application of California meal and rest break requirements.

In 2008 *FMCSA* denied a petition from a group of motor carriers asking that California's meal and rest break requirements be federally preempted.⁷ *FMCSA* issued the denial of the preemption request saying the laws are not "**laws and regulations on commercial motor vehicle safety.**" (Emphasis added).

The federal government's consistent positions expressed in 2008⁸ and the 2014 brief supplied in *Dilts v. Penske Logistics, Inc.*, stating that absent a safety linkage the US DOT couldn't preempt California's meal and rest break requirements is now in conflict with the reasoning used to justify the *SC&RA* petition. In light of *FMCSA*'s rationale in approving the *SC&RA* exemption request we believe the safety linkage is now conclusively obvious. The rationale advanced in the *SC&RA* exemption proceeding is identical to the safety issue related to the application of California's meal and rest break requirement, and in fact, renders action taken by US DOT in granting the *SC&RA* exemption null and void in California.

The written decision from the Ninth Circuit in *Dilts v. Penske Logistics, Inc.*, gave tremendous deference to US DOT's brief stating:

But three factors specific to this issue lead us to "place some weight upon DOT's interpretation," Geier v. Am. Honda Motor Co., 529 U.S. 861, 883 (2000): (1) the agency's general expertise in the field of transportation and regulation, (2) the fact that the position taken in the brief represents the agency's reasoned consideration of the question, and (3) the fact that the government's position is generally consistent with its approach to other preemption questions concerning California's meal and rest break laws (although this is the first time that the government has taken a position on FAAAA preemption specifically).

In a concurring opinion district Judge Zouhary noted "Penske failed to carry its burden." Judge Zouhary pointedly expressed the view that specific examples of drivers being restricted in their ability to find parking may or may not have been persuasive. The US DOT brief claims not being able to find "legal parking" spots adequate to accommodate a large truck doesn't support preemption. That statement is in conflict with the logic applied in granting the *SC&RA* exemption request.

⁶ See - <http://www.impactlitigation.com/wp-content/uploads/2014/03/Penske-Brief.pdf>

⁷ See - <https://www.gpo.gov/fdsys/pkg/FR-2008-12-24/pdf/E8-30646.pdf>

⁸ *Ibid*

TRUCK PARKING

The linkage between adequate truck parking and highway safety is well documented to the point Congress included specific language (Jason's Law) within the highway bill, *Moving Ahead for Progress in the 21st Century Act* (MAP-21; P.L. 112-141)⁹ signed into law by President Barak Obama on July 6, 2012 that states in part:

*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**. (Emphasis added).*

Federal Highway Administration contains on its website extensive information related to the shortage of truck parking.¹⁰ For the purposes of this petition we'd note that the *Federal Highway Administration* states the following pertaining to truck parking:

*An inadequate supply of truck parking spaces can result in negative consequences. Tired truck drivers may continue to drive because they have difficulty finding a place to park for rest. Truck drivers may choose to park at unsafe locations, such as on the **shoulder of the road, exit ramps, or vacant lots, if they are unable to locate official, available parking.** (Emphasis added).*

When it comes to finding adequate space to park a tractor-trailer few states have as severe of an available truck parking issue as exists within California. Finding parking for a 65 foot or longer commercial motor vehicle is far different (and difficult) than a two-axle, less than 26,000 pound straight truck which can virtually pull into any gas station or fast food restaurant while its operator complies with California meal and rest break requirements.

California has the distinction of having two of the most congested metropolitan areas not just in the U.S. but also on the planet. The Los Angeles basin and San Francisco (Bay area) are ranked #1 and #5 respectively as most congested. The metropolitan San Diego area doesn't fare much better.

Within those three metropolitan areas encompassing approximately 29 million people many jurisdictions specifically prohibit any commercial truck parking on their local surface streets. The only truck stops of any size with available truck parking in the LA basin are located in Ontario and Fontana (50+ miles from downtown), there are none in San Diego, and in the Bay area one must travel either south to Gilroy or east towards Sacramento or into the Central Valley. Bluntly, there simply are no meaningful, safe and available options for drivers of long combination commercial motor vehicles to park in order to comply with California's meal and rest break requirements. In order to comply with California requirements they necessarily will park alongside freeways and illegally on on/off ramps – exactly the behavior both Congress and US DOT have recognized as inherently unsafe.

We'd also note that many routes commercial drivers may travel within California have little or no available truck parking. A driver of an OD/OW shipment traveling I-15 between San Diego and the Inland Empire will not locate parking until they reach Ontario, CA. a distance of 115 miles. Traveling I-5 between San Diego and Los Angeles there is only one rest area with limited truck parking spaces at Camp Pendleton. From San Diego on I-5 one would have to travel 166 miles to Castaic, CA. to find available truck parking. Both routes experience congestion at levels rarely experienced in most of the rest of the

⁹ MAP-21, Sec. 1401. <https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

¹⁰ US DOT, Federal Highway Administration, Freight Management and Operations - https://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/

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country. In our opinion if California is to insist on compliance with its own work rules for federally regulated drivers, the state has an obligation then to make safe and adequate truck parking available – something it has chosen not to pursue.

Our statements regarding the truck parking issue and linkage to highway safety in support of our preemption request are not anecdotal. The *University of California – Berkley's Transportation Sustainability Research Center* performed a study titled *Commercial Vehicle Parking in California: Exploratory Evaluation of the Problem and Possible Technology-Based Solutions*¹¹ and stated in the abstract for the study:

*The United States is experiencing dramatic growth in commercial vehicle truck travel on our nation's roadway system as well as critical shortages in truck parking. California ranks first in the nation in overall (private and public) commercial vehicle parking shortage. Recent estimates of the demand for truck parking in California indicate that demand exceeds capacity at all public rest areas; this is the case at 88 percent of private truck stops on the 34 corridors in California with the highest truck travel volumes... **The truck parking shortage in California and the U.S. has a number of serious consequences that threaten our roadway safety, public health, and economic productivity.**(Emphasis added).*

Contrary to assertions by supporters of allowing states such as California to regulate HOS of federally regulated truck drivers citing specious “safety” related justifications, the effect of allowing California to insist on adherence to its own break requirements for federally regulated OS/OW drivers is to measurably compromise highway safety. A truck parking alongside highways to comply with restrictive state rules is unsafe.

CONCLUSION

Many WSTA members are small-businesses that have faced adverse legal action as a result of the 2014 decision in *Dilts v. Penske Logistics, Inc.* For our members transporting OS/OW loads they are unable to take advantage of the flexibility allowed as a result of the successful SC&RA petition related to the 30-minute break requirement, they must still comply with California requirements. Highway safety should be everyone's primary goal however allowing California to continue its interference with the HOS of OS/OW drivers engaged in interstate/foreign commerce is compromising that goal.

On behalf of our members transporting OS/OW loads we request that US DOT preempt California meal and rest break laws as applied to those types of operations.

Sincerely,



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¹¹ <http://tsrc.berkeley.edu/commercialparking>