



To: United States Senate/United States House of Representatives

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

Dear Senator/Representative:

On behalf of the undersigned national associations representing importers, exporters, and the logistics industries and service providers that support them, we urge you to reject efforts to re-write longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA).

We understand that a campaign is underway to persuade Congress to grant to local governments the ability to regulate the harbor drayage industry to address environmental and port security matters, and thereby eliminate the federal pre-emption 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.

The impetus for exempting port trucking services from federal preemption stems in part from the Port of Los Angeles' claim that local ports should be allowed to regulate interstate trucking services in order to improve air quality and port security in the aftermath of 9/11. However, the supporters of this special exemption are only seeking to change federal law in response to a series of unfavorable legal decisions restricting their authority over port drayage operations and to undermine ongoing litigation in this area. In 2007, the Port of Los Angeles established its Clean Truck Program as a policy tool to reduce emissions from the harbor trucks serving southern California marine terminals. That program included a ban on the oldest trucks serving the marine terminals, and a fee was imposed on beneficial cargo owners for every truck move using equipment that fails to meet 2007 U.S. EPA emissions standards. The Port of Los Angeles Clean Truck Program also included a controversial truck concession program that includes, a provision banning any harbor trucking company from using independent owner-operator drivers in favor of employee drivers, among other onerous economic-based

regulations. It is our belief that restrictions that are designed to eliminate competition from small independent businesses in favor of significantly fewer and much larger market participants are fundamentally unfair and would be bad public policy especially considering the precarious position of the U.S. labor market and American economy.

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

The ATA requested a preliminary injunction which was sustained in part by both the U.S. District Court for the Central District of California and 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 are unconstitutional and preempted by the FAAAA. The Ninth Circuit further found that the ban on independent drivers, among other concession rules, did not fall within an exception to preemption based on "motor vehicle safety." Accordingly, the Ports now seek to expand the exceptions to federal preemption legislatively to accomplish by statute an objective that the Courts found to be unlawful. In fact, the Court of Appeals recognized that federal preemption of interstate trucking services was designed to prevent such a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles concession plan. We urge you to reject these efforts which would undermine the current efficient, competitive, and safe freight transportation system.

Despite assertions from those who support broader powers by local entities to regulate interstate commerce, we support continued efforts to improve air quality at America's ports. These improvements will be achieved quickly without any change to federal law. Already in Southern California, the Clean Truck Program has resulted in the removal of almost 5,000 dirty trucks from service and replaced them with new and cleaner equipment.

We believe that the environment, safety 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,

NASSTRAC (countersigned with the National Retail Federation and other supporting associations)

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