



October 25, 2018

The Honorable Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Ave, SE
Washington, D.C. 20590

Toi Hutchinson
State Senator
Illinois
President, NCSL

Jon Heining
General Counsel
Legislative Council
Texas
Staff Chair, NCSL

William Pound
Executive Director

RE: Docket No. FMCSA-2018-0304

Dear Administrator Martinez:

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation's states, territories, and commonwealths, we appreciate the opportunity to comment on the recent petition from the American Trucking Association (ATA) requesting a determination that the state of California's meal and rest break rules are pre-empted by federal law.

General Applicability

The California meal and rest break law (Cal. Lab. Code 226.2, 512(a)) referenced by the ATA petition is not a law specific to the trucking industry, or even the transportation industry, but rather an employment law in the California labor code, applying more broadly to employees rather than just commercial drivers. The California legislature passed this law in 1999 and it became effective in 2000.

Pre-emption

States must be provided the flexibility to shape public policy, as creative solutions to public problems can be achieved more readily when state laws are accorded due respect. State laws should never be pre-empted without substantial justification, compelling need and a broad consensus. Further, states should not be undercut through the regulatory process. It is not acceptable for unelected federal agency officials to exercise legislative authority in the guise of regulation, and to pre-empt the decisions of elected officials in legislatures of the sovereign states. Any agency intending to pre-empt state laws and rules must have the express authority or clear evidence from Congress of the intent to pre-empt. Although this petition is specific to California's meal and rest break law, there are currently 21 states that enacted similar laws—a full list is included at the end of our comments. Therefore, a decision pre-empting California's law could have a significant impact across a wide swath of the country.

Interstate versus intrastate

NCSL agrees that the federal government is primarily responsible for the regulation of interstate transportation and commerce, including safety and security. However, NCSL strongly supports states retaining the unburdened authority to regulate intrastate commerce. Further, we oppose

pre-emption of state regulation of intrastate motor carrier operations based on an affiliation with, or integration of other modes of carriage.

Past Legal Determinations

There are two key previous rulings on the question of whether California's law is pre-empted by federal law. In 2008, FMCSA rejected a petition for pre-emption because "The petition does not satisfy the threshold requirement for preemption under 49 U.S.C. 31141(c) because the provisions at issue are not 'laws and regulations on commercial motor vehicle safety,' but rather laws and regulations applied generally to California employers."

Additionally, in 2014, the United States Court of Appeals, Ninth Circuit ruled in the case of *Dilts v. Penske Logistics* that "California's meal and rest break laws plainly are not the sorts of laws "related to" prices, routes, or services that Congress intended to preempt. They do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly. They are "broad law[s] applying to hundreds of different industries" with no other "forbidden connection with prices [routes,] and services." As part of this case, the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration filed an *amicus* brief, which argued that:

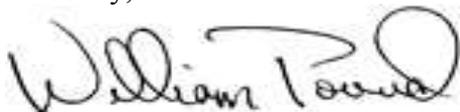
"The statute's preemptive scope, however, is not unbounded. It must instead be construed in light of the principle that state laws dealing with matters traditionally within a state's police powers are not to be preempted unless Congress's intent to supersede state law is clear and manifest.

The FAAA Act does not preempt the state meal and rest break law under these standards. The California law is squarely within the states' traditional power to regulate the employment relationship and to protect worker health and safety. Moreover, it is a law of longstanding, general applicability and does not reflect any state effort to regulate motor carriers directly.

A state law may nonetheless be preempted if it has an indirect but significant effect on prices, routes, or services. The effects of the meal and rest break law, however, are not sufficient to overcome the presumption against displacing California's traditional power to protect its workers."

Based on the reasons outlined above, NCSL urges the agency to reject the petition. If you have any questions or concerns, please don't hesitate to contact NCSL Staff Ben Husch, ben.husch@ncsl.org or Kristen Hildreth, kristen.hildreth@ncsl.org.

Sincerely,



William T. Pound
Executive Director
National Conference of State Legislatures

State Meal & Rest Laws	
California	Cal. Lab. Code 226.2, 512(a)
Colorado	Colorado minimum wage order number 30
Connecticut	Conn. Gen. Stat. 31-51ii
Delaware	19 Del. C. 707
Illinois	820 ILCS 140/3 and 829 ILCS 140/3.1
Kentucky	KRS 337.355, 337.365, 339.270, 339.400
Maine	26 M.R.S.A 601
Maryland	Md. Code Ann., Labor & Employment 3-710
Massachusetts	Mass. Gen. Laws Ch. 148, section 190; 148 section 100, 101
Minnesota:	Minn. Stat. 177.254; Minn. Stat. 177.253
Nebraska	Neb. Rev. Stat. 48-212
Nevada	NRS 608.019; NAC 608.145
New Hampshire	N.H. Rec. Stat. Ann. 275:30-a
New York	N.Y Labor Law 161, 162, 165; N.Y. Rules and Regulations, Tit. 12, Part 186 <i>et seq.</i>
North Dakota	N.D.A.C. 46-02-07-02(5)
Oregon	OAR 839-020-005; OAR B39-021-0072
Rhode Island	R.I. Gen. Laws 28-3-14
Tennessee	Tenn. Code Ann. 50-2-103(h); Tenn. Code Ann. 50-5-115
Vermont	21 V.S.A 304
Washington	Wash. Admin. Code 296-126-002; 296-126-092
West Virginia	W.Va. Code 21-3-10a