



Center for Justice & Democracy's  
Public Policy Clinic  
New York Law School  
185 West Broadway  
New York, NY 10013

April 2, 2021

Meera Joshi, Acting Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590-0001

Dear Acting Administrator Joshi:

Re: Urging Action Regarding Petitions FMCSA-2018-0304 and FMCSA-2019-0128-0001

My name is Katerina Pluhacek Garcia, and I am a student intern with the Center of Justice & Democracy. I am writing on behalf of the Civil Justice and National Advocacy Clinic at New York Law School to urge the FMCAA to reconsider its position on preemption of state meal and rest laws for commercial drivers.

As you may know, the agency recently granted two separate petitions filed by California and Washington State trucking associations to preempt California and Washington's meal and rest break rules. The agency granted these petitions<sup>1</sup> even though these determinations contradicted FMCSA's past policy<sup>2</sup> as well as court decisions.<sup>3</sup> However, these recent determinations were upheld by the 9<sup>th</sup> Circuit in January 2021.<sup>4</sup> We believe that these recent agency actions and the recent 9<sup>th</sup> Circuit decision were wrong, and we request FMCSA to consider ways to reverse course to preserve state labor laws that protect all workers, even if those workers are commercial drivers.

In 1984, Congress passed the Motor Carrier Safety Act of 1984, under which the Secretary of Transportation prescribes regulations on commercial motor vehicle safety. Under the statute,<sup>5</sup> FMCSA has authority to review state laws and regulations "on commercial motor vehicle safety" to decide if they should be preempted. However, in this case, California's and Washington's laws do not regulate commercial motor vehicle safety. The state laws are general labor laws,

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<sup>1</sup> See California Meal and Rest Break Rules, 83 Fed. Reg. 50,142 (Oct. 4, 2018).

<sup>2</sup> See Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers; Rejection for Failure to Meet Threshold Requirement, 73 Fed. Reg. 79,204 – 06 (Dec. 24, 2008).

<sup>3</sup> *Dilts v. Penske Logistics, Inc.*, 769 F.3d 637 (9th Cir. 2014).

<sup>4</sup> *Int'l Bhd. of Teamsters, Local 2785 v. Fed Motor Carrier Safety Admin.*, 986 F.3d 841 (9th Cir., 2021).

<sup>5</sup> 49 USC §31141(c)

providing protections for the well-being and health of all employees in the state, not directly the commercial motor vehicle industry. Indeed, in 2008, the FMCSA ruled that it did not have the authority to preempt California's meal and rest break rules for commercial motor vehicle drivers because the rules applied far beyond the trucking industry and were thus not "on commercial motor vehicle safety."<sup>6</sup> Therefore, the decision of the agency as well as the 9<sup>th</sup> Circuit is inconsistent with well-established FMCSA policy and prior decisions.<sup>7</sup>

However, even if the agency determines that these are commercial vehicle safety rules, the statute clearly says that state laws should be enforced, provided they are not incompatible with the federal statute or a burden on interstate commerce. The federal government has no basis to interfere with states' traditional police power to protect their labor force since nothing in these state laws conflict with the FMCCA's safety mission. On the contrary, both rules closely followed FMCSA's mission "to reduce crashes, injuries, and fatalities involving large trucks and buses."

Those seeking to invalidate state laws face a heavy burden given the Tenth Amendment to the Constitution, which reserves all powers not delegated to the United States to the states themselves. The framers of the Constitution believed that certain areas of our daily lives are better regulated by states due to the immense diversity among the states, such as their geographical features, economic standing, and resident's beliefs. There is no more suitable government body than the state itself to determine labor laws most fit for the health and wellbeing of local residents.

We strongly urge you to review the determinations of both petitions, restore the established policy favoring state labor laws, and reverse the FMCCA's infringement on the state's police power.

Sincerely,



Katerina S. Pluhacek Garcia

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<sup>6</sup> See *Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers; Rejection for Failure to Meet Threshold Requirement*, 73 Fed. Reg. 79,204 – 06 (Dec. 24, 2008).

<sup>7</sup> *Dilts v. Penske Logistics, Inc.*, 769 F.3d 637 (9th Cir. 2014).