

September 25, 2009

The Honorable James Oberstar
United States House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Re: **NRDC/Sierra Club Letter on Proposed Exemptions to the Federal Aviation Administration Authorization Act (FAAAA)**

Dear Chairman Oberstar:

On behalf of the undersigned national associations representing importers, exporters, and the logistics industries and service providers that support them, we are writing to you to address a number of inaccuracies and incorrect statements from the August 21st letter you received from the Natural Resources Defense Council and the Sierra Club regarding legislation which would amend longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA). As noted in our previous correspondence with you on July 27th, an amendment to the FAAAA is not required for the ports to achieve their clean truck goals. The ports have already been successful in the implementation of their programs and have exceeded the goals they have set for compliance.

We wish to address a number of the issues raised by the August 21st letter you received.

Misrepresentation #1 – Amending the FAAAA is required to protect the Clean Truck Program at the Ports of Los Angeles and Long Beach.

Fact – This is a completely false statement. To date, both the Ports of Los Angeles and Long Beach have proudly announced the success of their Clean Truck Programs (CTP). In fact, in a September 11th press release, the Port of Los Angeles stated that in August 2009, more than 66% of the cargo moves at the terminals were made by clean trucks that meet the 2007 emission standards. The Port of Long Beach stated that the Clean Trucks Program is cleaning the air far ahead of schedule and 85 percent of all containers that moved through the Port were carried by clean trucks or on-dock trains. These achievements have been achieved without the need to amend the FAAAA or the inclusion of the controversial concession plan. The true environmental goals of the CTP were never challenged by industry. We also believe that it is relevant to note that the Port of Long Beach does not support the proposed amendment.

In the letter you received from the NRDC and the Sierra Club, even they acknowledge the success of the CTP: *“over the course of less than one year, the CTP has significantly reduced air pollution at the ports and in communities all along freight transportation corridors—so much so that the ports’ goal of reducing truck emissions by 80% in five years will likely be achieved by the second year of the program.”* Again, the

ports have achieved this success with the current program which does not include the controversial concession plan or require changes to federal law.

In addition, under federal clean air statutes, no state is preempted from taking steps to reduce air pollution in non-attainment areas. In fact, in California, the state Air Resources Board (ARB) has already imposed emission standards for drayage trucks. No doubt, these new regulations which entered into force in 2009 are partially responsible for the success now being achieved in California. No federal action is necessary to give the state additional authority to address clean air issues, because that authority has already been provided to the states under existing federal law.

Misrepresentation #2 – By creating a direct contractual relationship between the ports and trucking companies, the concession agreements allow the ports to hold an identifiable, financially-responsible entity accountable for compliance with the CTP. Without a concession model, the ports have no way to directly enforce the truck ban on licensed motor carriers.

Fact – This statement is simply not true. The ports are currently capable of enforcing a ban on older trucks. The ports have worked with terminal operators to establish a truck registry that is coupled with a mitigation fee paid by cargo owners and an RFID tag provided by industry. This program, now known as PortCheck, is up and running, and as noted above, has resulted in a fairly rapid turnover of old trucks. Moreover, the investment needed to upgrade trucks is being undertaken almost exclusively by private industry, instead of the taxpayers of California. And as a result of the regulations imposed by the port and the state, truck dray rates are higher than they were before--one of the stated purposes of the concession plans. Further regulation of trucking companies to enforce the regulations imposed by the ports and the state is simply not needed.

Misrepresentation #3 - Without a concession agreement, the ports will have to rely solely on marine terminal operators (MTOs), who operate the port terminal gates, to turn away trucks that do not meet the truck ban. However, enforcement of the truck ban through MTOs is inefficient and ineffective.

Fact – As noted above, the ports have successfully implemented the first ban of pre-1989 trucks using RFID tags, stickers, and the PortCheck operating system that includes a truck registry. Trucks are not allowed to enter a marine facility in Los Angeles or Long Beach without the RFID tag issued by PortCheck. The licensed motor carrier has to enter each truck and driver into the truck registry system. Unregistered trucks or drivers simply do not have access to the marine terminals, and the marine terminals are collecting mitigation fees and turning trucks away without any problems.

Indeed, even if a concession plan were put in place, the ports would still need to rely on marine terminal operators to enforce the truck ban. The Ports of LA and Long Beach already rely on MTOs to do nearly all marine terminal operations at their port facilities in the normal course of business because they are landlord ports. Yet somehow, now when it comes to the relatively simple gate operation of denying entry to a truck, the very tenants entrusted by the Ports to facilitate over 15 million transactions

at these marine terminals a year are accused of being unreliable and ineffective at managing their own terminal operations. This also sends the unfair message that somehow the Ports' MTO tenants operate in some sort of legal or regulatory vacuum. This also is not the case. The truth is that all PortCheck operations are being facilitated under the strict terms of tariffs and discussion agreements between the terminals that have been sanctioned by the Federal Maritime Commission – and each MTO must follow the dictates of the terms of their tariff and the limits placed on their discussion agreement by the FMC without exception. To say that the Ports cannot rely on their own tenants to follow the terms of their federally-sanctioned tariffs not only defies logic and common sense but flies in the face of the everyday experiences and reality of terminal operations.

Misrepresentation #4 - The concession agreements place vehicle maintenance requirements on trucking companies, rather than on underpaid drivers, to ensure that trucks operate as cleanly and efficiently as possible.

Fact – It is inaccurate to allege or to imply that owner-operators are not capable of meeting safety, emissions, or security standards when they already are obliged to meet various standards as a condition for operating—and do so now. The states and the federal government already have vehicle maintenance and safety requirements that owner-operator truckers meet each and every day. Those standards are enforced by states and the federal government, and there is no need to allow ports to add a new layer of enforcement designed, not to improve safety, security or efficiency, but, literally, to put owner-operator trucks out of business by prohibiting them from servicing the ports. A unanimous Ninth Circuit U.S. Court of Appeals decision on the CTP stated in direct terms that: “We see little safety-related merit in those thread-paper arguments, which denigrate small businesses and insist that individuals should work for large employers or not at all.”

The idea that owner-operators need port concession plans for some kind of economic justice is equally false. Were an employee-mandate to be imposed on owner-operators, it would force them to give up their independent businesses and go to work as employees. There is no economic justice in forcing the closure of small business ventures because of the patently false notion that small business can't meet environmental or safety standards.

Finally, the federal government already requires background checks on employee drivers as well as owner-operator drivers under the Federal Motor Carrier Safety Administration. These checks include work history, medical history, immigration status, and drug/alcohol testing. In addition, all port drivers are required to have Transportation Worker ID Cards (TWICs) as a result of the Maritime Transportation Security Act (MTSA). Even without the new truck registry, it is specious to say that terminal operators and ports have no idea who the owner operator drivers are. If that were the case, the nation's ports would be in default of federal law and could be shut down by U.S. Coast Guard and the Department of Homeland Security. The federal government already carries a particularly large enforcement stick with respect to TWIC and other security issues. U.S. ports are currently compliant with TWIC and other MTSA requirements, which means that owner-operators have TWIC cards, because

they will not be allowed access to terminals without them. Equally important is the fact that in Southern California the truck registry program provides an additional level of defense. No weakening of federal laws is needed in this area. Allowing individual ports across America to preempt federal security regulations and impose their own security standards -- as the amendment would allow -- would make America less secure, not more secure.

Misrepresentation #5 – The concession agreements require trucking companies doing business at the ports to be more efficient, thereby reducing air pollution generated by port traffic and congestion. Prior to the ports' implementation of the CTP, the port drayage system was rife with inefficiencies that hampered the ports' abilities to efficiently move cargo.

Fact – There is no evidence to support this claim. In fact, there is ample evidence that terminal operators, trucking companies and owner-operators, and cargo owners have been working hard over many years to improve efficiency. Indeed, for cargo owners, truckers, and terminals, trucking efficiency is an important industry issue, particularly since 2004 when international trade from Asia experienced rapid growth. A few industry examples are illustrative:

- In July 2005 industry launched the PierPass program in the ports of Los Angeles and Long Beach. This program--developed and managed by industry--successfully moved almost half of all container cargo to nighttime operations, thereby taking trucks off the roads during congested daylight commute times. By doing this, industry not only addressed congestion issues, but air quality issues as well. This program is still in effect today and was accomplished without any changes in federal law.
- Trucking companies have every incentive to route trucks with loads and empty containers to minimize non-revenue moves. This is done to save fuel and increase the money paid to drivers. The Port of Los Angeles never discussed port efficiency with motor carriers. As a separate matter, however, cargo owners have identified truck mobility issues at terminal gates as a key component of greater efficiency and reduced air pollution. Industry approached the Transportation Research Board with a study proposal two years ago and as a result, the TRB has undertaken a study of terminal gate operations to identify ways and means of making gate operations more efficient. The results of this federally funded study will be available next spring and its goal is to produce a handbook on how to make gate operations more efficient and to reduce idling time at marine terminal gates.
- Cargo interests have also been working with equipment leasing companies to promote the creation of shared chassis pools, virtual container yards, and other innovations that would greatly reduce truck trips related to the movement of intermodal equipment. No one in industry needs a concession plan or federal legislation to undertake these sensible best business practices.

As we have previously stated, we fully support the efforts at our nation's ports to improve air quality and congratulate the Ports of Los Angeles and Long Beach on the success they have had with the CTP to date. This success is being achieved without the controversial concession plan or an amendment to the FAAAA. We support the efforts of other ports, such as Seattle, which does not have a concession plan and isn't seeking an amendment to the FAAAA, and hope they have the same kind of success that the Ports of Los Angeles and Long Beach have had to date.

The environment, safety, and the 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 in advance for your consideration of our views. Please feel free to contact us with any questions or concerns.

Sincerely,

Agriculture Transportation Coalition
American Apparel and Footwear Association
American Association of Exporters and Importers
American Import Shippers Association
American Trucking Associations
Coalition of New England Companies for Trade
Consumer Electronics Association
Fashion Accessories Shippers Association
Footwear Distributors and Retailers Association
Harbor Truckers Sustainable Future LA/LB
International Warehouse and Logistics Association
NASSTRAC, Inc.
National Association of Waterfront Employers
National Industrial Transportation League
National Retail Federation
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns Inc.
Retail Industry Leaders Association
The Health & Personal Care Logistics Conference, Inc.
The New York Shipping Association, Inc
The Waterfront Coalition
Transportation Intermediaries Association
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
U.S. Chamber of Commerce
United States Council for International Business
West State Alliance, Oakland
Western Home Furnishings Association
World Shipping Council