



April 22, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Appeal of Secretary Chao's Denial of our Emergency Petition for Preemption Order to Preempt State and Local gun laws as Interference with Interstate Commerce; Request for Executive Order.

Dear President Trump:

In furtherance of our March 12, 2020 letter to you on which, Secretary Chao was copied via email, thank you for your March 13, 2020 National Emergency declaration and for Secretary Chao's suspension of Federal Hours of Service (HOS) Regulations for motor carriers engaged in COVID-19 relief efforts. On behalf of the small motor carrier industry, the Small Business in Transportation Coalition ("SBTC") aka Truckers.com would also like to thank you for your recognition of America's truckers at the White House last week.

We now write to you again to request Executive action and reconsideration of Secretary Chao's April 21, 2020 denial of our request for a preemption order insofar as state and local gun laws restrict interstate truckers from carrying loaded, readily-accessible firearms for self-protection and constitute unreasonable interference with interstate commerce.

On March 20, 2020, we filed an emergency petition with Secretary Chao via email:

Subject: EMERGENCY REQUEST: life-threatening dangers on the road now call for immediate Federal preemption of state/local gun restrictions on truckers as they constitute unreasonable interference with interstate commerce

Madam Secretary,



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We know you have your hands full right now. But with the crisis worsening by the hour... with two states now having issued stay at home orders affecting 20% of Americans, causing metropolitan areas to now be desolate, and with cities like New York and Los Angeles releasing criminals from jails, now more than ever are there significant life threatening dangers to the men and women who drive trucks as America's supply chain first responders.

Therefore, in accordance with the Second Amendment to the United States Constitution, we hereby request the U.S. Department of Transportation please issue a preemption order nullifying any and all state and local laws that restrict truck drivers from carrying firearms across state lines throughout America in order to enable them to protect themselves and their cargo as they engage in interstate commerce.

As this is now a matter of life and death, please issue same forthwith.

Yesterday, the Federal Motor Carrier Safety Administration responded stating:

Mr. Lamb:

This message is in response to your request that FMCSA "issue a preemption order nullifying any and all state and local laws that restrict truck drivers from carrying firearms across state lines throughout America in order to enable them to protect themselves and their cargo as they engage in interstate commerce." Thank you for advising us of SBTC's request to Congress for legislation in this area.

FMCSA does not have jurisdiction over firearms possession by CMV drivers engaged in interstate commerce, and the matter is outside FMCSA's preemption authority. Our understanding is that Federal law generally does not prohibit CMV drivers from carrying firearms in their vehicles, provided that they comply with State and local laws. Such action may also be subject to restrictions imposed by employers, owners, or operators of the CMVs. As to Federal preemption, Title 49, U.S. Code section 31141 confers authority upon the Secretary to preempt certain State laws "on commercial motor vehicle safety." In addition, 49 USC 14501(c) provides for preemption of State laws that "relate to a price, route, or service of any motor carrier." State laws regulating possession of firearms, however, are neither laws "on commercial motor vehicle safety" nor do they relate to a "price, route, or service of any motor carrier." For this reason, your request is denied.

Sincerely,

*Larry W. Minor
Associate Administrator for Policy
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590*

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The SBTC notes that cities like New York have anti-gun laws affecting drivers of commercial motor vehicles that are more stringent than Federal law and that you as the President have Constitutional authority under the Supremacy Clause to grant our preemption request; that is, the Executive branch need not look to any statute for authority as the Secretary has done, here, when the Constitution already bestows such authority upon the President under both the Supremacy and Commerce Clauses.

We also note that New York City has made it illegal to possess a loaded firearm in any motor vehicle without a valid New York license to carry and that New York does not accept applications for concealed carry permits from out-of-state applicants or grant reciprocity. Only residents of New York may apply. This restriction on truckers is more stringent than the laws of the Federal Government governing motor carriers, which, as Mr. Minor points out, has no law or rule against operators of commercial motor vehicles carrying loaded weapons in their vehicles for self-defense and personal protection.

Furthermore, Governor Cuomo has stopped gun sales in New York and 52 of the 62 counties in New York have stopped processing applications for pistol permits.

We contend the Federal Government's right to regulate commercial motor vehicles operating in interstate commerce trumps any and all 10th Amendment claims insofar as you have the lawful authority to regulate commercial motor vehicles going into, out of, and through the state of New York and other states. Furthermore, if cities allow their residents to keep hand guns in their homes for self-protection but deny the same right to nomadic over-the-road truckers who live and sleep in their trucks, then we believe the Federal Government has an obligation to ensure states and municipalities are not infringing upon citizen truckers' right to equal protection of the law and due process. All you need do is assert your authority under the Supremacy and Commerce Clauses through an executive order and with a wave of your pen this problem will be solved.

The statute Mr. Minor cites (49 U.S. Code § 31141. Review and preemption of State laws and regulations) states:

- (4) Additional or more stringent regulations.—If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced unless the Secretary also decides that—*
- (A) the State law or regulation has no safety benefit;*
 - (B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or*
 - (C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.*

*(5) Consideration of effect on interstate commerce.—
In deciding under paragraph (4) whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.*

We believe state and municipal gun laws are interfering with interstate commerce, especially during this emergency pandemic. New York City last week launched a "Feeding New York" campaign that cites the City Council's concerns about disruptions in the food supply chain. We believe this is, in part, due to our expressing to them through a nationwide press release that truckers do not feel safe travelling into the city... not only because of the risks associated with Coronavirus, but because of the inherent dangers associated with a break down in the city's criminal justice system.

We note New York has eliminated bail, causing a catch-and-release, revolving-door situation. Crime had already increased at the start of the year before the pandemic attacked America; that is, there has been, according to mainstream media reports, a nearly 17% increase in all major index categories in New York City, with shootings up 27%, robberies up 35%, burglaries up 18%, auto thefts up 70%, grand larcenies up 10%, and felony assaults up 8.5%. This is what interstate truckers are driving into.

We also point to how during the pandemic, up to 20% of NYPD police officers have been out sick. At last count, 1,935 uniformed members and 293 civilian members tested positive for the coronavirus. The city has stopped making misdemeanor arrests and has even released 900 criminals from its jails as of March 31st. At Rikers Island, 406 staff members and 287 inmates have tested positive for COVID-19 as of early April. We note other cities like Los Angeles have followed suit releasing their inmates.

Truckers are therefore concerned about their personal safety on multiple levels. They would feel much safer and be more willing to service New York City if they had a lawful right to protect themselves as the city streets are not as populated as they normally are.

We would also ask that you note that we have asked the Secretary to arrange for testing of truckers at truck stops and received no response. Truckers are traveling around the country without access to masks, gloves, and hand sanitizer. With an operational budget of \$665 million for FY 2019, surely the Federal Motor Carrier Safety Administration has funding available in its budget to make this a reality in accordance with the National Transportation Policy to keep the supply chain intact. America can do so much more for truckers than just **#ThankATrucker**.

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Lastly, we ask that you note that the industry is well aware that the USDOT is currently working with autonomous vehicle manufacturers to replace truckers as soon as this crisis is over. We ask that you please put a stop to making truckers obsolete. Truckers are currently anxious about their uncertain future. Independent owner-operators are also struggling with over capacity, not enough volume, and extremely low rates being offered by the large property brokers and third-party logistics intermediaries. In fact, protests broke out yesterday in Houston over this.

Trucking media have begun to highlight the disastrous effects driverless trucks will have including loss of at least 900,000 jobs and pointed to how USDOT and autonomous vehicle manufacturers have begun working to usher in driverless trucks: <https://transportationnation.com/trucking-regulators-stakeholders-and-media-align-to-promote-self-driving-trucks/>. A Petition to Secretary Chao, which we put up late last week, has quickly gained the support of over 25,000 Americans in just five days and is now trending on Change.org. You may view it at <https://www.change.org/SaveTruckers>.

As you know, the Coronavirus pandemic plaguing our nation is the worst pandemic in a hundred years. We therefore respectfully request that you take quick decisive action. We ask the United States government please implement a protective program to take care of the medical health, safety and welfare of truckers during this crisis, help them protect their own lives by affording them their Second Amendment rights and asserting Federal authority over the states to stop unreasonable interference with interstate commerce, and save their jobs so that they truly feel thanked and thankful when this is all over. As you well know, Truckers have stepped up for America in a big way this past month. If you step up for them now, they will remember you in November.

Thank you for your consideration.

Sincerely,

/s/ JAMES LAMB
SBTC Executive Director
@RealJamesLamb

cc: The Honorable Elaine Chao, Secretary of Transportation
Acting FMCSA Administrator Jim Mullen via email only
Members of U.S. Senate Committee on Commerce, Science, and Transportation
Members of House Committee on Transportation and Infrastructure
Mr. Larry Minor via email only
Mr. Laurence Socci, Esq. via email only