

## FAAAA Preemption: Clarifying the Law to Reestablish Congress' Original Intent

### Background

In 1980, Congress deregulated motor carriers to ensure the trucking industry would be shaped by competitive market forces against a backdrop of uniform federal regulation. By 1994, Congress saw states were interfering with that goal by hindering carriers' ability to conduct a standard way of doing business and by creating a patchwork of significant inefficiencies. To address this, Congress included an express preemption provision in the Federal Aviation Administration Authorization Act of 1994 (FAAAA), prohibiting states from enacting or enforcing policies "related to a **price, route, or service** of any motor carrier." The Supreme Court has repeatedly recognized that this language is expansive and applies to anything with a significant effect—direct or indirect—on motor carrier prices, routes or services.

### The Problem

Some lower courts – recently the Ninth Circuit – are refusing to adhere to Congress' intent, and, because the Supreme Court cannot correct them all, legislative action is necessary to clarify the law.

### The Solution

The FAAAA's preemption provision should be modified to clarify that the scope of Congress' preemption policy extends to state meal and rest break requirements. Enacting this clarification will ensure motor carriers can continue to operate efficiently and competitively, under nationally-standard federal regulations, as Congress intended, rather than being forced to adhere to a 50-state patchwork of rules governing driver hours.

- State meal and rest break requirements limit the services carriers can provide within the uniform federal hours-of-service framework and restrict them to routes with adequate facilities to accommodate the extra breaks.
- Federal regulations, for example, allow a motor carrier to offer to make a 6-hour run to deliver a time-sensitive load on time. However, the motor carrier could not provide that service in California because the state prescribes both a 10-minute rest break and a 30-minute meal break within that time frame. If forced to abide by state break laws, **carrier services and routes will be affected.**
- Relatedly, under California law, carriers cannot pay their drivers a lump sum for all the work entailed in moving a load from origin to destination, even if the lump-sum amount, divided by the total number of hours worked, exceeds the state's hourly minimum wage. Any associated non-driving time (inspections, paperwork, fueling, etc.) is deemed as uncompensated work, even though drivers earn as much as – or more than – they would under an hourly system.
- This form of "piece rate" pay is ubiquitous in the trucking industry because it aligns the incentives of carrier and driver to perform as efficiently as possible. If state law prevents motor carriers from using piece rate pay, **carrier prices will be affected.**
- Motor carriers operate with the understanding that such state meal and rest break requirements and bans on piece-rate pay are preempted by the FAAAA (and federal district courts have agreed). In light of the Ninth Circuit's restrictive approach to preemption, a legislative clarification is necessary to ensure state regulation in both contexts is preempted, as intended by Congress.