



March 8, 2021

Via carlos.monje@dot.gov & US Mail

The Honorable Pete Buttigieg
Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: (1) SBTC's 2019 PETITION FOR MOTOR VEHICLE SAFETY STANDARDS AND ENFORCEMENT PURSUANT TO 49 U.S. CODE § 30162, WHICH WAS REQUIRED BY STATUTE TO BE PROCESSED WITHIN 120 DAYS BUT WAS IGNORED BY USDOT; AND (2) REQUEST FOR OIG AUDIT OF FMCSA COMPLIANCE WITH MAP-21 INsofar as the Secretary was required to develop a bona fide ELD certification program.

Dear Secretary Buttigieg:

Congratulations on your confirmation as the new Secretary of Transportation.

By way of introduction and background, the Small Business in Transportation Coalition ("SBTC") is a 501(c)(6) non-profit transportation industry trade group operating through www.truckers.com, which promotes and protects the interests of small businesses in the industry. We encourage ethical business practices and support teamwork, cooperation, transparency, and partnerships among truckers, carriers, brokers, forwarders & shippers who seek to do business with the utmost integrity. By way of personal introduction, I am a former Motor Carrier Investigator with the New York State Department of Transportation who was charged with motor carrier safety enforcement.

On December 13, 2019, the SBTC petitioned your predecessor for MOTOR VEHICLE SAFETY STANDARDS AND ENFORCEMENT PURSUANT TO 49 U.S. Code § 30162. That Petition went unanswered. As you may know, SBTC has pending legislation against the Department due to the Federal Motor Carrier Safety Administration's (FMCSA) failure to process exemption applications in accordance with the law. The SBTC now requests that you please reconsider our petition below.

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Federal Law (49 U.S.C. § 30162) permits interested persons to petition the Secretary to commence proceedings to prescribe “motor vehicle safety standards.” We hereby file this letter as such a petition and offer this letter and facts that we believe establish that a motor vehicle safety standard or order is necessary.

49 U.S.C. § 30102 defines “motor vehicle safety standard” as “a minimum standard for motor vehicle or motor vehicle equipment performance.”

The Moving Ahead for Progress in the 21st Century Act (“MAP-21) directed you to take certain actions with respect to electronic logging devices (“ELDs”), including but not limited to promulgating regulations:

“...requiring a commercial motor vehicle involved in interstate commerce and operated by a driver subject to the hours of service and the record of duty status requirements under part 395 of title 49, Code of Federal Regulations, be equipped with an electronic logging device to improve compliance by an operator of a vehicle with hours of service regulations prescribed by the Secretary;”

MAP-21 further required that your regulations:

“...require an electronic logging device— “(i) to accurately record commercial driver hours of service; “(ii) to record the location of a commercial motor vehicle; “(iii) to be tamper resistant; and “(iv) to be synchronized to the operation of the vehicle engine or be capable of recognizing when the vehicle is being operated; “(B) allow law enforcement to access the data contained in the device during a roadside inspection; and “(C) apply to a commercial motor vehicle beginning on the date that is 2 years after the date that the regulations are published as a final rule.”

MAP-21 also directed “Performance and Design” standards:

“The regulations prescribed under subsection (a) shall establish performance standards— “(A) defining a standardized user interface to aid vehicle operator compliance and law enforcement review; “(B) establishing a secure process for standardized— “(i) and unique vehicle operator identification; “(ii) data access; “(iii) data transfer for vehicle operators between motor vehicles; “(iv) data storage for a motor carrier; and “(v) data transfer and transportability for law enforcement officials;

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“(C) establishing a standard security level for an electronic logging device and related components to be tamper resistant by using a methodology endorsed by a nationally recognized standards organization; and “(D) identifying each driver subject to the hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.”

Finally, in terms of the enforcement of these standards, MAP-21 imposed an affirmative duty on you to promulgate certification criteria and a process for certification:

CERTIFICATION CRITERIA.— “(1) IN GENERAL.—The regulations prescribed by the Secretary under this section shall establish the criteria and a process for the certification of electronic logging devices to ensure that the device meets the performance requirements under this section.

An ELD falls under the definition of “motor vehicle safety standard” insofar as an ELD is commercial “motor vehicle equipment” mandated by law.

Our previous requests to the Federal Government to suspend the ELD rule due to then new data showing a 30 year high in large truck fatality rates and delay the December 16th 2019 transition to ELDs fell upon deaf ears. Instead, the Secretary Chao Department and the Commercial Vehicle Safety Alliance (“CVSA”) implemented hard ELD enforcement. We are now at a 31 year high. Accordingly, on behalf of its membership and the small carrier industry in general, the Small Business in Transportation Coalition (“SBTC”) now repeats its 2019 request for an order to be issued which: (1) enforces MAP-21 and directs that all ELD products actually be certified by the Federal Motor Carrier Safety Administration (“FMCSA”) in accordance with the directive and standards set forth in MAP-21; and (2) declares a **moratorium** on ELD enforcement until a bona fide certification process is in place that allows carriers to properly vet ELD products as intended by Congress.

We again ask for this process as a replacement of FMCSA’s current “self-certification” procedure, which, we contend, (1) skirts the United States Department of Transportation’s (“USDOT”) responsibility under MAP-21 to develop a bona fide certification process; and (2) recklessly allows non tamper-proof, unencrypted, and otherwise deficient ELD products to be used in Commercial Motor Vehicles due to the self-certification contrary to the intent of Congress.

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We would also like to unequivocally state again, here, that the ELD mandate was never properly mandated by FMCSA. In 2018, we wrote to FMCSA regarding their failure to adhere to 49 CFR Appendix A to Subpart B of Part 395, Functional Specifications for All Electronic Logging Devices (ELDs).

That is, we reminded them that FMCSA committed during rulemaking to making certain ELD-related information readily available to the industry and public online at the onset of implementation without the need for filing Freedom of Information Act or other data requests. We pointed to 49 CFR Appendix A to Subpart B of Part 395, Functional Specifications for All Electronic Logging Devices (ELDs) as follows:

5.3. Publicly Available Information

*Except for the information listed under paragraphs 5.1.1(b)(2), (4), and (5) and 5.2.1(b)(9) of this appendix, **FMCSA will make the information in sections 5.1 .1 and 5.2.1 for each certified ELD publicly available on a Web site to allow motor carriers to determine which products have been properly registered and certified as ELDs compliant with this appendix** (emphasis added).*

We noted that 5.1.1. states:

5.1.1. Registering Online

(a) An ELD provider developing an ELD technology must register online at a secure FMCSA Web site where the ELD provider can securely certify that its ELD is compliant with this appendix.

(b) Provider's registration must include the following information:

(1) Company name of the technology provider/manufacturer.

(2) Name of an individual authorized by the provider to verify that the ELD is compliant with this appendix and to certify it under section 5.2 of this appendix.

(3) Address of the registrant.

(4) Email address of the registrant.

(5) Telephone number of the registrant.

And we pointed out that 5.2.1 states:

5.2.1. Online Certification

(a) An ELD provider registered online as described in section 5.1 .1 of this appendix must disclose the information in paragraph (b) of this section about each ELD model and version and certify that the particular ELD is compliant with the requirements of this appendix.

(b) The online process will only allow a provider to complete certification if the provider successfully discloses all of the following required information:

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- (1) Name of the product.*
- (2) Model number of the product.*
- (3) Software version of the product.*
- (4) An ELD identifier, uniquely identifying the certified model and version of the ELD, assigned by the ELD provider in accordance with section 7.1 5 of this appendix.*
- (5) Picture and/or screen shot of the product.*
- (6) User's manual describing how to operate the ELD.*
- (7) Description of the supported and certified data transfer mechanisms and step-by-step instructions for a driver to produce and transfer the ELD records to an authorized safety official.*
- (8) Summary description of ELD malfunctions.*
- (9) Procedure to validate an ELD authentication value as described in section 7.1 4 of this appendix.*
- (10) Certifying statement describing how the product was tested to comply with FMCSA regulations.*

We further noted that FMCSA had --as of a 2018 --published in furtherance thereof a page at <https://csa.fmcsa.dot.gov/ELD/List>, which only covered the following items:

- (1) Name of the product.*
- (2) Model number of the product.*
- (3) Software version of the product.*
- (4) An ELD identifier, uniquely identifying the certified model and version of the ELD, assigned by the ELD provider in accordance with section 7.1 5 of this appendix.*
- (5) Picture and/or screen shot of the product.*

and:

- (1) Company name of the technology provider/manufacturer.*
- (4) Email address of the registrant.*
- (5) Telephone number of the registrant.*

We alerted FMCSA to the fact that the following seven data columns that are required to be published on the website appeared to have been omitted by FMCSA:

Name of an individual authorized by the provider to verify that the ELD is compliant with this appendix and to certify it under section 5.2 of this appendix.

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Address of the registrant.

User's manual describing how to operate the ELD.

Description of the supported and certified data transfer mechanisms and step-by-step instructions for a driver to produce and transfer the ELD records to an authorized safety official.

Summary description of ELD malfunctions.

Procedure to validate an ELD authentication value as described in section 7.1 4 of this appendix.

Certifying statement describing how the product was tested to comply with FMCSA regulations.

Also in 2018, we advised FMCSA that certain ELD manufacturers were misleading the industry to believe that their ELD products were "FMCSA-Certified" when the SBTC & FMCSA both knew this not to be true because of FMCSA's "self-certification" policy, which we contend shirked their responsibility under the Congressional directive. FMCSA did not address this with us and ignored this problem.

We still contend that FMCSA failed to adhere to its promise to publish the missing information referenced above for at least eight months after the ELD rule took effect in 2017, and that FMCSA thereby neglected to enable the industry to properly vet ELD products made available by ELD manufacturers, including being aware of very important information like a "summary description of malfunctions." Without this due notice, FMCSA therefore failed to properly implement the ELD rule.

FMCSA never acknowledged or responded to our concern that the ELD mandate was not properly implemented and that FMCSA failed to provide industry with the information it needed to make good choices when selecting ELD equipment at the onset of the ELD implementation compliance period.

In our comment to the agency a while back in furtherance of Hours of Service reform rulemaking, we pointed to the **national security** risks inherent in self-certification:

"SBTC was the only trucking association to tell to Congress that the trucking industry knows very well that there is the potential for criminals and others including terrorists to hack into trucks' telematic devices and breach drivers'

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bluetooth and wi-fi connections to take over the controls of trucks' accelerators remotely. They know this because the FMCSA's parent agency USDOT and the FBI issued a warning to this effect in 2016. And University of Michigan researchers reported they had accomplished this for real not too long ago. They actually hacked in and made a truck accelerate on a highway to the amazement - and sheer terror-- of its driver.

We ask FMCSA to imagine a HAZMAT truck being forced remotely into accelerating into a school bus filled with kids, or a hospital or nursing home, or a major city's water supply.

By opting to allow ELD manufacturers to "self-certify" we believe FMCSA skirted their obligations under MAP-21, jeopardized national security, and you have allowed the market to be flooded with unsecured devices that are not encrypted. Quite frankly, some of them malfunction and some don't work at all. We remind FMCSA here of our request to immediately suspend ELDs due to this national security concern and of our pending class exemption application.

And while some ELD manufacturers are out inappropriately peddling their products as being "FMCSA-certified," in reality... FMCSA has not certified any of them. Not a one. FMCSA merely requires these manufacturers register their products and "self-certify."

We find this ironic, when we think about how these are tracking devices that are intended to prevent truck drivers from, "self-certifying" their hours of service compliance on paper logs."

We continue to believe FMCSA's failure to develop a certification program to protect the industry and public from telematic devices susceptible to hacking... is reason enough to press the pause button on ELD enforcement until the agency has time to thoroughly research telematic vulnerabilities and develop a bona fide telematic certification program as originally directed by Congress. Our previous request to FMCSA to do so also went ignored and unanswered. We now ask either you or Congress copied here now do so

We would also like to note here that FMCSA's self-certification of ELD products has drawn the criticism of the **Federal Bureau of Investigation** in addition to the SBTC insofar as hacking is concerned. Indeed, in its attached July 21, 2020 bulletin, the Bureau stated:

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“Cyber criminals could exploit vulnerabilities in electronic logging devices (ELDs), which became required equipment in most commercial trucking operations as of 16 December 2019 due to a federal regulatory mandate. Although the mandate seeks to provide safety and efficiency benefits, it does not contain cybersecurity requirements for manufacturers or suppliers of ELDs, and there is no requirement for third-party validation or testing prior to the ELD self-certification process. This poses a risk to businesses because ELDs create a bridge between previously unconnected systems critical to trucking operations. Companies choosing an ELD can mitigate their cyber risk by following best practices tailored to ELDs. This includes asking the ELD’s supplier specific questions, some of which are identified in this PIN.”

And most recently, it was reported on March 1, 2021 by Freight Waves (<https://www.freightwaves.com/news/investigative:-keeptruckin-fights-ntsb-bid-to-remove-its-eld-technology-in-wake-of-crash>) that one National Transportation Safety Board member had this to say about “self-certification:

Michael Graham, NTSB board member, said during the Westfield Transport hearing that FMCSA’s review process for ELDs was “perilously close to very little or no certification” at all.

“It works, and it works because I say it works,” Graham said. “That’s not a very robust system.”

Please note Federal Law (49 U.S.C. § 30162) requires you to take certain action upon receiving this petition. Specifically, the law states:

“The Secretary shall grant or deny a petition not later than 120 days after the petition is filed. If a petition is granted, the Secretary shall begin the proceeding promptly. If a petition is denied, the Secretary shall publish the reasons for the denial in the Federal Register.”

While we request that you please process this petition in accordance with law, given the COVID-19 pandemic and the unique once-in-a-century challenges faced by truckers over the past year, the Omnitracs failure in 2019, and the concerns expressed by the FBI and NTSB which clearly show there is a need for USDOT oversight and certification of ELD products, we request an **Office of the USDOT Inspector General Audit** into

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FMCSA's implementation of the MAP-21 requirement that the Secretary develop a bona fide ELD certification program.

We also believe an **immediate nationwide emergency moratorium on ELD enforcement for all carriers** is in order until such time as a bona fide risk-free ELD certification program is properly developed and implemented by FMCSA in the interests of public safety and national security and that a return to paper logs, albeit temporary, be authorized. Given the agricultural exemption already granted by Congress, we believe Congress has already established firm public policy that paper logs are safe and sufficient for these carriers and in the public interest.

Thank you for your consideration.

Sincerely,

/s/ JAMES LAMB

SBTC Executive Director

cc: Mr. Laurence Socci, Esq. (via email)
Ms. Meera Joshi, FMCSA Acting Administrator (via email)
Mr. Eric.J.Soskin, USDOT OIG
Mr. Robert Sumwalt, NTSB Chairman (via US Mail)
All Members of Congress (via hand-delivery)