



December 13, 2019

Via Elaine.Chao@dot.gov & US Mail

The Honorable Elaine Chao
Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

**Re: PETITION FOR MOTOR VEHICLE SAFETY STANDARDS AND ENFORCEMENT
PURSUANT TO 49 U.S. Code § 30162 REQUIRED TO BE PROCESSED WITHIN 120
DAYS.**

Dear Secretary Chao:

As you know, Federal Law (49 U.S.C. § 30162) permits interested persons to petition you 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;

1775 I. (Eye) Street, NW, Suite 1150, Washington, DC 20006
202-587-2751 www.Truckers.com Support@Truckers.com

The Honorable Elaine Chao

December 13, 2019

Page 2 of 8

“(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; “(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.

The Honorable Elaine Chao

December 13, 2019

Page 3 of 8

It appears our previous requests to the Federal Government to suspend the ELD rule due to new data showing a 30 year high in large truck fatality rates and delay the December 16th transition to ELDs have fallen upon deaf ears. We presume your Department and the Commercial Vehicle Safety Alliance (“CVSA”) are proceeding with hard ELD enforcement. Accordingly, on behalf of its membership and the small carrier industry in general, the Small Business in Transportation Coalition (“SBTC”) hereby requests an order 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 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 unencrypted and otherwise deficient ELD products to be used in Commercial Motor Vehicles due to the self-certification contrary to the intent of Congress.

We would also like to unequivocally state again, here, that the ELD mandate was never properly mandated by FMCSA. We wish to remind you that a year ago, 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:

The Honorable Elaine Chao

December 13, 2019

Page 4 of 8

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:

(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.

The Honorable Elaine Chao

December 13, 2019

Page 5 of 8

We further noted that FMCSA had --as of a year ago --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.

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.

The Honorable Elaine Chao

December 13, 2019

Page 6 of 8

Also, we remind you that last year, we advised FMCSA that certain ELD manufacturers were misleading the industry to believe that their ELD products were "FMCSA-Certified" when the Small Business in Transportation Coalition ("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 recent comment to the agency 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' 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

The Honorable Elaine Chao

December 13, 2019

Page 7 of 8

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 Congressional 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.

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 Omnitracs failure last month showing the need for USDOT oversight and certification of ELD products... and the December 16th transition date fast approaching, we believe an **immediate emergency moratorium on enforcement** is in order forthwith.

Thank you for your consideration.

The Honorable Elaine Chao

December 13, 2019

Page 8 of 8

Sincerely,

/s/ JAMES LAMB

Executive Director

cc: Mr. Laurence Socci, Esq.

Mr. Minor; Mr. Fromm; Mr. Mullen;