



April 5, 2018

The Honorable Bill Shuster,
Chairman
Committee on Transportation & Infrastructure
2079 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Peter DeFazio,
Ranking Member
Committee on Transportation & Infrastructure
2134 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sam Graves,
Chairman
Subcommittee on Highways and Transit
1135 Longworth House Office Building
Washington, D.C. 20515

The Honorable Eleanor Holmes Norton,
Ranking Member
Subcommittee on Highways and Transit
2136 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster, Ranking Member DeFazio, Chairman Graves, and Ranking Member Norton:

By way of background, the **Small Business in Transportation Coalition (SBTC)** is a 501(c)(6) non-profit transportation industry trade group, which promotes and protects the interests of small businesses in the industry. We operate under the domain www.Truckers.com. We encourage ethical business practices and support teamwork, cooperation, transparency, and partnerships among truckers, carriers, brokers, and shippers who seek to do business with the utmost integrity.

On behalf of our membership --and millions of small business motor carriers and truck drivers operating in interstate transportation within the United States, we respectfully request the Committee on Transportation and Infrastructure urgently conduct an oversight hearing on the critically flawed, and recently implemented Federal Motor Carrier Safety Administration (FMCSA) Electronic Logging Device (ELD) Rule codified at 49 CFR 395.15.

It is a fundamental responsibility of Congress to maintain oversight of agencies it tasks with implementing new regulations, especially those that will have a significant impact on American businesses, the nation's commerce, and the nation's economy. When a federal agency fails to effectively implement a Congressional requirement to the extent FMCSA has with its implementation of the ELD Rule, it is the obligation of Congress to examine the agency's actions and determine what legislative or administrative remedies are needed.

Prior to the \$2 billion ELD Rule taking effect, the SBTC received many inquiries from our members and other stakeholders expressing serious concerns about the implementation of the

ELD Rule. Those concerns ranged from the government mandating that a private business purchase a product strictly for the convenience of law enforcement, the accuracy of the data being collected by ELDs, the government's use and security of the collected data, the government's ability to track truck drivers at any given time, the required use of a government mandated product to do the same task that truck drivers have been doing through paper logs for decades, and more.

We contend these concerns have been validated, as FMCSA has granted an assortment of waivers, exceptions, and soft enforcement deadlines to various industries and businesses; all of which, have only led to more confusion about the ELD Rule within the industry, including our members and truck drivers across the country.

Further, we contend that regulations that are **more extensive than necessary** (such as the ELD Rule) are not in the public interest or in furtherance of the National Transportation Policy asserted by Congress in 49 U.S.C. 13101. Under the ELD Rule, a truck driver must shut down his vehicle – regardless of what he is carrying, or his current location – simply because the ELD (which may or may not be accurate) machine says so. In many instances, this could lead to a safety concern if a driver is on a desolate or dangerous road and is forced to shut down his truck, without there safe truck parking nearby, because the ELD device requires him to do so. Indeed, according to the U.S. Department of Labor, more than 500 workers in interstate commerce were **murdered** over the past decade on the job. We believe the ELD Rule exacerbates this dangerous situation, a situation Congress has already acknowledged through the passage of "*Jason's Law*."

Additionally, there appears to a concern even among ELD manufacturers themselves that the ELD devices currently being marketed and sold to drivers are not fully compliant with the ELD regulations. There have been reports of system failures, faulty GPS tracking, inaccurate recording of duty statuses, speed irregularities and more. Although FMCSA is fully aware of these issues, it has not taken adequate steps to correct these problems or even inform truck drivers that their ELD devices may not be compliant and has instead rushed to implementation.

In fact, the FMCSA has **ignored** Congress' directive that FMCSA establish the criteria and a process for the certification of ELDs to ensure devices meet performance requirements under the law, essentially skirting the issue by allowing manufacturers of these devices to "self-certify".

See: <https://www.fmcsa.dot.gov/hours-service/elds/equipment-registration>

...as compared to Congress' mandate:

“(c) 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.

“(2) Effect of noncertification.--Electronic logging devices that are not certified in accordance with the certification process referred to in paragraph (1) shall not be acceptable evidence of hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.

...and:

- “(b) Electronic Logging Device Requirements.--*
 - “(2) 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.*

We further believe the ELD statute includes language which suggests Congress intended to afford flexibility to drivers to allow the continued use of paper logs to track their hours of service and that the rigidity of the FMCSA’s ELD Rule ignores that intended flexibility:

- “(d) Additional Considerations.--The Secretary, in prescribing the regulations described in subsection (a), shall consider how such regulations may--*
 - “(1) reduce or eliminate requirements for drivers and motor carriers to retain supporting documentation associated with paper-based records of duty status if--*
 - “(A) data contained in an electronic logging device supplants such documentation; and*
 - “(B) using such data without paper-based records does not diminish the Secretary's ability to audit and review compliance with the Secretary's hours of service regulations; and*
 - “(2) include such measures as the Secretary determines are necessary to protect the privacy of each individual whose personal data is contained in an electronic logging device.*

And in this... the era of Data Security, we believe the rule inadequately addresses Congress' mandate that FMCSA institute appropriate measures to preserve the confidentiality of drivers' personal data giving, rise to Orwellian concerns:

“(e) Use of Data.--

“(1) In general.--The Secretary may utilize information contained in an electronic logging device only to enforce the Secretary's motor carrier safety and related regulations, including record-of-duty status regulations.

“(2) Measures to preserve confidentiality of personal data.--The Secretary shall institute appropriate measures to preserve the confidentiality of any personal data contained in an electronic logging device and disclosed in the course of an action taken by the Secretary or by law enforcement officials to enforce the regulations referred to in paragraph (1).

“(3) Enforcement.--The Secretary shall institute appropriate measures to ensure any information collected by electronic logging devices is used by enforcement personnel only for the purpose of determining compliance with hours of service requirements.

The SBTC also takes issue with a rule that treats a self-employed, one-man owner-operator operating under his own interstate authority the same as a “Fortune 500” mega carrier with thousands of trucks in its fleet that can easily bear the cost of compliance as a matter of economies of scale.

In November of 2017, in response to a United States Department of Transportation (USDOT) “Notification of Regulatory Review,” Docker ID: DOT-OST-2017-0069-1442, which called for comments on regulations ripe for review, we filed comments in the ELD matter with USDOT. We also asked the Small Business Administration (SBA) for assistance in obtaining ELD Rule reconsideration from the FMCSA, including a reassessment of the impact of the ELD rule on small private, common and contract motor carriers with fewer than 50 employees, including, but not limited to, one-man private and for-hire owner-operators of commercial motor vehicles operating in interstate commerce. In response to our inquiry, the SBA advised us earlier this year that FMCSA advised the SBA they declined to reconsider the ELD Rule or reassess the impact on small businesses as we requested. To date, our class ELD Exemption Application submitted to FMCSA in November to prevent the compelled purchase of ELD products has yet to be published in the *Federal Register* and our request to FMCSA for a stay of the April 1st, 2018 was **ignored**.

Nonetheless, we maintain the FMCSA failed to take adequate steps to minimize adverse economic impacts on small entities during ELD rulemakings; that is, a reading of the FMCSA analysis during rulemaking suggests that FMCSA essentially ignored and disregarded the impact on the smallest of industry players in an overbroad assessment that places one-man interstate owner-operators into the same category as other “small businesses” within the trucking industry.

For instance, in referencing North American Industry Classification System ("NAICS") codes 484110 through 484230 (Freight Trucking), the FMCSA makes no distinction whatsoever between businesses with annual revenues of \$27.5 million and mere one-man operators of commercial motor vehicles.

FMCSA specifically stated:


"Of the population of motor carriers that FMCSA regulates, 99 percent are considered small entities under SBA's definition. Because small businesses constitute a large part of the demographic the Agency regulates, providing exemptions to small business to permit noncompliance with safety regulations is not feasible and not consistent with good public policy. The safe operation of CMVs on the Nation's highways depends on compliance with all of FMCSA's safety regulations. Accordingly, the Agency will not allow any motor carriers to be exempt from coverage of the rule based solely on a status as a small entity."

It is for these reasons the SBTC requests an oversight hearing on the implementation of the ELD Rule. We are confident an oversight hearing would offer valuable information to Congress and the public about the problems associated with the ELD Rule, how those problems can be addressed, and what legislative or administrative steps must be taken to address these grave issues.

I am available to testify before your Committee on the issues and concerns addressed here. It is vital that your Committee exert your oversight authority on this important matter immediately as **effective April 1st, 2018, drivers and motor carriers are currently being placed out-of-service under the ELD rule nationwide.**

Thank you for your consideration.

Sincerely,


/s/James P. Lamb,
SBTC President

cc: Members of the Committee on Transportation and Infrastructure