



October 23, 2019

Hon. Roger F. Wicker, Chairman
U.S. Senate Committee on Commerce, Science, and Transportation
512 Dirksen Senate Building
Washington DC, 20510

Hon Peter A. DeFazio, Chairman
House Committee on Transportation and Infrastructure
2165 RHOB
Washington, DC 20515 -6256

Re: Impact of Electronic Logging Device (ELD) Mandate on 2018 Large Truck Fatalities Released Yesterday & Request for Suspension of ELDs by Congress.

Dear Chairmen Wicker & DeFazio:

Yesterday, just one day after the comment period ended on Hours of Service reform rulemaking, Secretary Chao, copied here, through the U.S. Department of Transportation's National Highway Traffic Safety Administration, released highway crash fatality data for 2018. See: <https://www.nhtsa.gov/press-releases/roadway-fatalities-2018-fars>.

Although NHTSA's release title is intended to highlight a general decrease in highway fatalities, the news is not so good for trucking. Large truck fatalities increased yet again 0.9% in 2018. This is on top of an increase of at least 4.9% in 2017, the year the ELD mandate went into effect. We note that USDOT previously reported that truck fatalities for 2017 had increased 9% and that the Department has now removed from this statistic some pick-up trucks from the large truck category, which, when combined with a trailer, still constitute commercial motor vehicles over 10,000 lbs, calling into question whether they are trying to skew the results to achieve a lower increase in fatality percentage.

In any event, whereas the Federal Motor Carrier Safety Administration (FMCSA) had promised the industry and public that ELDs would save 26 lives per year, it now is evident this is not the case. Our members have reported to us that they have witnessed an increase in truck drivers speeding recklessly since the ELD rule went into effect to beat the clock, a clock that has now become controlled by machines.

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While we neither condone cheating on paper logs nor speeding, we can understand truck drivers' anxiety in that they are trying to avoid starvation because they are paid by the mile. We believe this is the reason for the increase in fatalities these past two years --rather than FMCSA's projected decrease... in this, the ELD era. We therefore write to you both today to respectfully ask you to please immediately suspend the ELD mandate and direct FMCSA to further study this issue to determine whether the ELD rule is ripe for repeal. We believe this would immediately relieve the strain on the industry and protect the public from more fatalities in the remainder of 2019 and moving forward.

And while we are cognizant of the fact that some regulators will be quick to suggest the regulatory answer to reckless speeding is to mandate speed governors in commercial motor vehicles, such a move does not --and cannot --address speeding on local roads and in school and construction zones. We believe the true safety problem remains that truckers are paid by the mile and regulated by the clock. So, it would appear that a change in paradigm to change the motivation to cheat on logs and speed is in order.

We are therefore encouraging our member small carriers to consider paying their drivers a base salary with performance incentive bonuses. And we would like to take this opportunity to ask your respective committees to please consider whether now might be a good time to review and consider revoking the motor carrier exemption to the Fair Labor Standards Act to encourage a change in trucker pay model industry-wide.

We would also like to bring to your attention that the ELD mandate was never properly mandated by FMCSA. 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):

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/manufacture.

(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.

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:

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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.*

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.

Also 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.

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We suggested 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 just this past Monday 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 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.”

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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 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 ELDs 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.

For all these reasons, on behalf of its 15,000 members, the SBTC implores your committees to please immediately act to suspend the use of ELDs before even more American citizens are lost due to these unintended consequences.

Thank you for your consideration.

Sincerely,

/s/ JAMES LAMB
SBTC President

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

Members of U.S. Senate Committee on Commerce, Science, and Transportation

Members of House Committee on Transportation and Infrastructure