



December 26, 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: Request for Congress to Defund the Federal Motor Carrier Safety Administration (FMCSA) and replace it with an independent motor carrier commission reminiscent of the Interstate Commerce Commission.

Dear Chairmen Wicker & DeFazio:

I write to you today representing more than 15,000 truckers and motor carriers operating in interstate commerce to ask that your committees please consider **defunding** and replacing the Federal Motor Carrier Safety Administration (FMCSA) due to failure to faithfully execute its mandate, dereliction of duty, negligent and reckless disregard for public safety, failure to abide by Congressional directives, failure to reduce large truck fatalities, general incompetence, repeated violations of Federal Law and political corruption. We offer the following information for your review and consideration.

As you know, the FMCSA was established as a separate administration within the United States Department of Transportation (USDOT) on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999. FMCSA is headquartered in Washington, DC and employs more than 1,000 people in all 50 States and the District of Columbia, all purportedly dedicated to improving the safety of commercial motor vehicles (CMV) and saving lives.

As you also know from our October 23, 2019 letter to you, on October 22, 2019 the USDOT's National Highway Traffic Safety Administration (NHTSA), released highway crash fatality data for 2018. See: <https://www.nhtsa.gov/press-releases/roadwayfatalities-2018-fars>

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Although NHTSA's release title was intended to highlight a general decrease in highway fatalities, 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 Electronic Logging Device (ELD) mandate went into effect. We note that USDOT previous 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, this is now a 30-year high. Large truck occupants have not died at this rate since 1988. This is abysmal and the Secretary should not be applauding this **failure**.

We note the FMCSA promised drivers they would achieve a safer working environment for commercial vehicle operators after the onset of ELDs. In fact, on their website <https://www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices>, FMCSA purports "The electronic logging device (ELD) rule – congressionally mandated as a part of MAP-21 – is intended to help **create a safer work environment for drivers...** (emphasis added)". This turned out to be absolutely untrue. The agency has **failed** to appreciate and acknowledge these statistics and will not conclude their implementation of the ELD mandate was an appalling failure. We contend the agency is captured by

"Big Trucking" and the true purpose of ELDs was not to improve safety as they purported to Congress and the public... but to drive up the costs of small business owners in an illegitimate, anti-competitive attack on owner-operators in collusion with larger carriers.

FMCSA has therefore failed to improve motor carrier safety.

VIOLATION OF 49 U.S. Code § 14504a:

More disturbingly, we pointed out on December 23, 2019 to the Secretary of Transportation how –despite their mission to "*reduce crashes, injuries and fatalities involving large trucks and buses*" for three straight years now, FMCSA has **unlawfully** interfered with and delayed the collection and distribution of motor carrier safety funds for use by the states to, ironically, reduce crashes, injuries and fatalities involving large trucks and buses... by unreasonably stretching out rulemaking to set the Unified Carrier Registration fees contrary to law:

We write to you today because your Department is charged with the responsibility under the UCR Act (49 U.S. Code § 14504a.) of setting UCR fees and your Department's delays for three years straight in processing the UCR Board's proposals for fees have caused --and continue to cause --industry-wide chaos and confusion.

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Indeed, for three consecutive years now, the annual UCR program has unreasonably commenced late due to Federal Motor Carrier Safety Administration (“FMCSA”) extended rulemaking conducted contrary to Federal law, which states you are required to set UCR fees for the upcoming year within 90 days of receiving the Board’s fee recommendations.

Although the UCR Agreement required the Board to open the 2018 UCR renewal period on October 1st, 2017, FMCSA rulemaking effectively caused the program to open late in January of 2018. Similarly, the 2019 UCR renewal period opened in late December 2018. And while we have no idea when FMCSA will release the final fee rule that is currently pending for the 2020 UCR renewal period, many stakeholders expect this will happen in late December or early January again.

We cannot fathom how or why the FMCSA would think it is ok to knowingly deprive the states of safety funds critical to achieving motor carrier safety. We note the FMCSA has known --or should have known-- since 2007 that such prolonged delays have a **devastating impact** on the states ability to improve motor carrier safety. It appears these bureaucrats simply do not care.

In our December 24, 2019 letter to the Government Accountability Office (GAO), we wrote:

For the past three years in a row, there have been similar delays in the states receiving their safety funds that have had the same effect that your office cited in your report at:

https://digital.library.unt.edu/ark:/67531/metadc301839/m2/1/high_res_d/94919.pdf

We respectfully request your office please review the Department of Transportation’s handling of this matter and address the issues in our letter to the Secretary in the interest of holding the Federal Motor Carrier Safety Administration accountable to Congress and recommending the implementation of much needed reform.

In fact, in that 2007 report, the GAO stated:

“Some state officials told us that the delay in implementation has hindered their ability to acquire revenues, and thus regulate motor carriers and improve safety. Twenty five of 28 states that responded to our survey indicated that a delay in implementing the unified carrier fee system hindered their ability to acquire

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revenues, and 22 states indicated that this was a great or very great hindrance. Since the Single State Registration System expired and no new system took its place, states that collected fees under Single State Registration System have not yet been able to collect these fees during 2007. If implementation of the unified carrier fee system is not completed by the end of 2007, FMCSA officials said it is unlikely that states could recoup fees not collected to date. In addition, 23 of 28 states reported that the delay hindered their ability to regulate motor carriers, and 13 states indicated that this was a great or very great hindrance. For example, Washington state officials reported that it had to scale back its transportation regulation, such as safety audits of commercial motor vehicles, drivers, and companies, by approximately 20 percent. Finally, 19 of 28 states reported that the delay hindered their ability to improve safety programs, and 9 states indicated that this was a great or very great hindrance. Moreover, further delay could jeopardize safety and enforcement programs in certain states. For example, Michigan reported that if replacement funding is not secured by July 1, 2007, its entire enforcement program, including the federal Motor Carrier Safety Assistance Program, will likely shutdown."

So, when FMCSA arrogantly engaged in unlawfully drawn-out rulemaking in 2017 in violation of the 90-day provision established by Congress, did so again in 2018, and yet again here in 2019, they either knew-- or should have known—they were **jeopardizing public safety contrary to their mission and disobeying your Congressional directives**. Apparently, they believe they know better than you.

The FMCSA's current delay is once again adversely affecting the 41 participating states' cash flow in terms of their receiving much-needed funds to support motor carrier safety initiatives and highway enforcement, thereby jeopardizing public safety, contrary to the agency's very mission, which is clearly not in the public interest.

Indeed, this delay places motor carriers in an uncertain, precarious position. For the past three years, they are trying to comply since October 1st to avoid enforcement, but their payments are being rejected by the UCR Board's UCR.gov website and by the states at the UCR Board's direction because FMCSA staff are dragging their feet again.

This delay also violates the Congressional directive stated in the "National Transportation Policy" codified at 49 U.S. Code § 13101 to "promote safe, adequate, economical, and efficient transportation" in that it is delaying the collection of fees used by the states to protect the public and SBTC-member carriers and drivers from unsafe and illegal motor carrier operations.

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This delay may also cause truck drivers to refuse to drive in interstate commerce starting on January 1, 2020 because they cannot comply with 2020 UCR to avoid administrative notices of violation that carry civil penalties, civil fines, and/or arrest by law enforcement, thereby adversely affecting interstate commerce.

This is but one example of the agency's sheer incompetence and dereliction of duty that makes defunding of FMCSA and the creation of the new independent commission the prudent course of action in the public interest. For us, this is withholding of motor carrier enforcement funds is the last straw. We hope you will concur.

But there is so much more to report to you...

VIOLATION OF 5 U.S. Code § 552a:

In March 2019, SBTC discovered the FMCSA had engaged in **unlawful release of truckers' and carriers' personally-identifiable information** to the Unified Carrier Registration Plan, a self-described "Congressionally established unincorporated nonprofit association"¹, in **violation of the Privacy Act**. That, in turn, resulted in a breach of 30,000 truckers' and carrier principals' social security numbers as admitted to at: <https://plan.ucr.gov/wp-content/uploads/2019/10/UCR-Data-Investigation-Press-Release.pdf>

VIOLATION OF 49 U.S. Code § 31315:

FMCSA failed to process our original 2017 ELD class exemption application in accordance with the 180-day statutory processing requirement. At the same time, they processed our competitor's exemption application filed the day after. The attached November 19, 2019 letter from Acting Administrator Jim Mullen proves the agency is aware of this 180-day Congressional requirement. So, they simply disregarded it and did not act until we filed a Federal lawsuit asking the court to compel the agency to act.

Worse, the agency actually **defrauded** the industry and public by requesting public comments on our exemption application after USDOT legal counsel had inappropriately already dismissed the merits of our application in a letter to SBA. The entire comment process was therefore a waste of taxpayer resources. As the original proceeding was a sham and our application was summarily dismissed without attention to our argument, we have resubmitted same, demanding consideration on the merits that is due. Arbitrarily & capriciously railroading an industry trade group is not within the agency's mission statement and it is certainly not permissible under the Administrative Procedure Act.

¹ <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4803:a0zzw1.3.1>

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ADDITIONAL VIOLATION OF 49 U.S. Code § 31315:

FMCSA has also failed to publish our September 10th Broker Bond Exemption Application “upon receipt” as required by Federal law.

THIRD VIOLATION OF 49 U.S. Code § 31315:

FMCSA failed to process our Midland Texas Hours of Service Exemption Application.

VIOLATION OF 49 U.S. Code § 31137: IGNORING SECTIONS OF *MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP-21)* THAT ESTABLISHED THE MECHANISM BY WHICH, FMCSA WAS TO IMPLEMENT THE ALLEGED "ELD MANDATE:

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”. 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. We brought up National Security risks posed by "self-certification" and how the agency is aware of these risks because USDOT issued a joint *public service announcement* with the FBI in 2016:

<https://www.ic3.gov/media/2016/160317.aspx>

In light of this, proceeding with ELDs instead of suspending the rule to further study vulnerabilities clearly is doing no “*service*” to the “*public.*”

Indeed, 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. 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.

FMCSA has failed to address our complaints that ELD manufacturers are fraudulently holding their products out as being “FMCSA certified” when no such certification process exists despite a Congressional directive to create one—and they merely have manufacturers “self-certify” through a registration process.

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VIOLATION OF SECTION 32104 OF MAP-21: FAILURE TO REPORT TO CONGRESS ON APPROPRIATENESS OF THE BROKER BOND FOR 7 YEARS:

MAP-21 passed in 2012 was very clear. Congress raised the broker bond from \$10,000 to \$75,000, which **forced 40% of the industry at the time out-of-business** in December of 2013, and directed FMCSA to report to Congress on the impact of that new \$75,000 bond by assessing the "appropriateness" of this bond amount. Incidentally, during previous household goods broker bond rulemaking, the agency concluded bonds over \$25,000 would have "anti-competitive" effects. Twice now, they have skirted this issue in their reports to Congress, suggesting their understanding is that no one in the industry really cares about the broker bond anymore and that somehow alleviates their responsibility to comply with a Congressional mandate. 'Yeah, we'll get to that next time' the agency has now essentially said. Twice.

We suggest the agency needs to have its hearing checked. Here's the exact provision they are **ignoring** that we ask your committees to hold them accountable for. Disintermediation was not Congress' stated intent for raising the bond:

"SEC. 32104. FINANCIAL RESPONSIBILITY REQUIREMENTS. Not later than 6 months after the date of enactment of this Act, and every 4 years thereafter, the Secretary shall— (1) issue a report on the appropriateness of— (A) the current minimum financial responsibility requirements under sections 31138 and 31139 of title 49, United States Code; and (B) the current bond and insurance requirements under sections 13904(f), 13903, and 13906 of title 49, United States Code; and (2) submit the report issued under paragraph (1) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives."

Furthermore, **FMCSA has failed** to address our reports of intrusion into FMCSA systems and protect FMCSA systems from intrusion by unscrupulous third parties misrepresenting they are law enforcement agencies or bona fide government-contracted auditors. We note the Inspector General is currently auditing FMCSA on this matter, along with two other matters: "FMCSA's Oversight of Commercial Driver Medical Certificates" and "Oversight of Commercial Driver Disqualifications." An additional audit dealing with FMCSA's "Corrective Action Plan for National Academy of Sciences Correlation Study on Improving Motor Carrier Safety Measurement" was commenced in 2018, along with numerous others over the past decade.

FMCSA has failed to address our complaints that third parties are using FMCSA logos in their solicitations to motor carriers.

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FMCSA has failed to preempt the UCR Plan from unlawfully collecting UCR fees from carriers engaged purely in intrastate commerce.

FMCSA has failed to preempt the UCR Plan from unlawfully collecting accessorial fees not duly promulgated by FMCSA from carriers engaged in interstate commerce.

FMCSA has failed to preempt local ordinances and stop municipalities such as Midland, Texas that interfere with interstate commerce and the Hours of Service regulations by preventing property-carrying commercial motor vehicle operators from discontinuing to operate their vehicles after 11 hours of driving time by outlawing truck parking city-wide. Our coercion complaint against Midland was **ignored**.

FMCSA has failed to respect commercial free speech and has crossed the line by inferring third-party service companies are somehow violating the law by unlawfully targeting and labeling such third-party service companies as “*aggressive marketers*.”

FMCSA has failed over the past 18 months to acknowledge and respond to our petition for rulemaking to promulgate rules for submission of class exemption applications within 180 days and diligently track our application through publication on their website <https://www.fmcsa.dot.gov/petitions> in **violation of their lawful obligation to do so under the Fixing America’s Surface Transportation Act (Public Law No: 114-94)**².

FMCSA has failed as of the end of 2019 to commence a “comprehensive enforcement program” to crack down on carriers operating as unlawful brokers as the agency promised in the Federal Register in 2013 (Federal Register / Vol. 78, No. 172 / Thursday, September 5, 2013 / Notices).

FMCSA has failed to enforce the broker license requirement on formerly-licensed brokers who continue to operate illegally as chameleon “dispatchers” arranging motor carrier transportation for-hire without a license or any bond with impunity.

FMCSA has failed to address our petition for rulemaking to codify Interstate Commerce Commission precedent in the Code of Federal Regulations and clarify that “dispatchers” who do not possess a broker license are operating illegally so that we may exercise the private cause of action set forth in MAP-21.

² (a) In General.--The Administrator of the Federal Motor Carrier Safety Administration shall-- (1) publish on a publicly accessible Internet Web site of the Department a summary of all petitions for regulatory action submitted to the Administration; and... (3) not later than 180 days after the date a summary of a petition is published under paragraph (1), formally respond to such petition by indicating whether the Administrator will accept, deny, or further review the petition;

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Lastly, and most disturbingly to me, FMCSA has unethically engaged in **malicious, political retaliation** against me personally as a trade group leader, I believe, to enact revenge for my suing the agency twice on behalf of industry by asking another agency to make a case against my privately-held business despite knowing complaints they purported were against my business were actually traced by them to an imposter in China.

Along those lines, **FMCSA has failed** to process my personal Freedom of Information Act (FOIA) requests dating back to 2016 in **violation of FOIA**, I believe, to hide their unlawful and unethical behavior, collusion with my competitors in the trade group arena, and illegitimately obstruct justice in an attempt to prevent a Bivens action against agency personnel. This is corruption at its absolute worst. When combined with reckless failure to promptly facilitate state motor carrier enforcement funds, these are reasons enough to disband the agency in my mind. Indeed, it is no wonder former FMCSA Ray Martinez recently jumped ship after just 18 months of service.

In the interest of public integrity, we therefore respectfully ask that you please hold hearings on this proposal to defund the agency and hold the Secretary and FMCSA executives accountable for these failures, unlawful and unethical activity, and patterns of fraud, abuse, waste, and mismanagement. Please let us know if you would like us to produce additional documents or testify on these matters to support this request.

Thank you for your consideration.

Sincerely,

/s/ JAMES LAMB
SBTC Executive Director

cc: The Honorable Elaine Chao, Secretary of Transportation

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

Members of House Committee on Transportation and Infrastructure

Mr. Mullen

Laurence Socci, Esq.