



August 31<sup>st</sup>, 2021

Via [meera.joshi@dot.gov](mailto:meera.joshi@dot.gov) & US Mail

The Honorable Meera Joshi, Acting Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

**Re: FMCSA's Denial of SBTC's Petition for Class Exemption Rulemaking**

Dear Ms. Joshi:

Thank you for your letter of February 28, 2021 (Exhibit A), received by the SBTC on August 25, 2021, denying the SBTC's application for class exemption rulemaking.

In your decision, you suggest there is no need for additional regulations to distinguish between an applicant's request for an exemption as an individual driver or carrier from a request for an exemption for a class of persons as a trade group.

Despite SBTC having made a clear showing to the agency that the carrier-specific questions in your existing regulations cannot possibly be answered by a trade group making a request on behalf of class of carriers, you state in furtherance of the denial:

*"Regarding SBTC's initial November 20, 2017, application for an exemption from the ELD rule on behalf of all motor carriers with fewer than 50 employees, **FMCSA did not immediately seek public comment because the Agency determined the application did not include a description or discussion of an alternative to the ELD requirement.** The application indicated drivers would return to using paper records of duty status (RODS) which FMCSA did not view as an alternative to the applicable rule. In reviewing SBTC's request, the Agency did not make a distinction whether the request concerned a person or a class of persons. The Agency simply sought to understand what SBTC intended to serve as the alternative to ELDs to ensure there would be a meaningful opportunity for public comment (emphasis added)."*

This is not factually correct and suggests arbitrary and capricious handling because the decision not to publish and reject was grounded in the FMCSA not liking the nature of the alternative SBTC duly offered. A whim is not lawful justification to kick the application back to an industry trade group, withhold public notice and comment due process, and deny publication in the Federal Register.

Rather, the record shows that FMCSA used its exemption regulations as a weapon to engage in discrimination against the SBTC. That is, when facing two exemption applications filed one day apart, one from SBTC and the other from OOIDA, the agency chose to **selectively enforce** regulations that a trade group could not possibly comply with against SBTC, but not against OOIDA. Your rule states:

§ 381.310 How do I apply for an exemption?

(a) You must send a written request (for example, a typed or handwritten (printed) letter), which includes all of the information required by this section, to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(b) You must identify the person or class of persons who would be covered by the exemption. The application for an exemption must include:

- (1) Your name, job title, mailing address, and daytime telephone number;
- (2) The name of the individual or motor carrier that would be responsible for the use or operation of CMVs;
- (3) Principal place of business for the motor carrier (street address, city, State, and zip code); and
- (4) The USDOT identification number for the motor carrier.

(c) You must provide a written statement that:

- (1) Describes the reason the exemption is needed, including the time period during which it is needed;
- (2) Identifies the regulation from which you would like to be exempted;
- (3) Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption;
- (4) Assesses the safety impacts the exemption may have;
- (5) Explains how you would ensure that you could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation; and
- (6) Describes the impacts (e.g., inability to test innovative safety management control systems, etc.) you could experience if the exemption is not granted by the FMCSA.

(d) Your application must include a copy of all research reports, technical papers, and other publications and documents you reference.

The record shows the SBTC filed its ELD exemption application originally via fax and US Mail on November 20th 2017 (Exhibit B) ...and publicly announced we did so.

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FMCSA kicked the SBTC application back on January 5<sup>th</sup> 2018 (Exhibit C). Whereas you now purport: “**FMCSA did not immediately seek public comment because the Agency determined the application did not include a description or discussion of an alternative to the ELD requirement...**” the truth is Cathy Gautreaux stated in her rejection letter:

*“The requirements for applying for an exemption are specified in 49 CFR 381.310. The information that you provided is incomplete as submitted. Your application must describe the reason the exemption is needed, the impacts the motor carriers would experience without the exemption, an assessment of the safety impacts the exemption may have, and a description of how you would ensure a level of safety comparable to that achieved by the regulations.”*

However, in actuality, taken one-by-one, the SBTC had actually provided complete information in its original November 2017 submission to your agency.

**1. Your application must describe the reason the exemption is needed.**

SBTC was quite clear that the reason the exemption was needed was because the rule violates drivers’ free commercial speech in that the rule is more extensive than is necessary to serve the public’s interest. We also stated ELDs were not necessary to carry out the transportation policy of 49 U.S.C. 13101 and not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and given previous exemptions already granted, that our exemption, too, was in the public interest.

**2. ...the impacts the motor carriers would experience without the exemption.**

SBTC was quite clear drivers first amendment rights to free speech would be infringed.

**3. ...an assessment of the safety impacts the exemption may have...**

SBTC stated the government had already granted exemptions that allowed for a return to paper logs after having assessed itself those exemptions --including the agricultural exemption-- would have minimal safety impacts.

**4. ...and a description of how you would ensure a level of safety comparable to that achieved by the regulations.**

Once again, SBTC suggested in lieu of ELDs, the exempt class should be permitted to ensure HOS compliance through paper logs in accordance with America’s policies to go easy on small businesses to prevent unintended anti-competitive effects.

Here, SBTC did not **really** fail to address the points FMCSA alleged it had failed to address; rather, FMCSA simply did not like the subject matter of the SBTC's submission and treated it in an arbitrary and capricious fashion. FMCSA had a statutory obligation to publish the application "upon receipt" and simply failed to do so; we believe, intentionally.

Contrary to your assertion now, SBTC **did** include a description or discussion of an alternative to the ELD requirement, **namely, a return to paper logs** to keep track of and communicate to law enforcement a driver's hours of service compliance.

The record further reflects that OOIDA then filed an ELD exemption application the very next day on November 21, 2017 (Exhibit D).

OOIDA's exemption application was no less "deficient" under a strict construction of the rule, yet it sailed through the bureaucracy and did not have its application returned to them for failure to abide by the rule; that is, their application was immediately published giving the public the false impression that OOIDA thought of the idea of filing an exemption application first.<sup>1</sup>

OOIDA did not (and we argue could not) comply with the rule insofar as it calls for:

*\*The name of the individual or motor carrier that would be responsible for the use or operation of CMVs;*

*\*Principal place of business for the motor carrier (street address, city, State, and zip code)*

*\*The USDOT identification number for the motor carrier.*

*\*A written statement that:*

*Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption.*

It could not answer these questions because OOIDA is a trade group, not a single motor carrier or independent driver applicant. Yet these provisions of the rule and others cited to us were not thrown at OOIDA as an attachment to a bogus rejection letter.

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<sup>1</sup> We note in 2020 when SBTC filed a petition for broker rulemaking and OOIDA followed weeks later, FMCSA published them simultaneously rather than in the order received.

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Indeed, it would appear the agency acted in collusion with OOIDA by selectively and unreasonably enforcing the rule against SBTC in order to intentionally delay the SBTC application from being published in a timely manner. It is not the government's place to interfere with one group over another as it engages in fair competition in the private sector marketplace or especially aid one group as it seeks a competitive edge.

SBTC addressed this matter on June 8<sup>th</sup> 2018 via email exchange with Mr. Minor and Mr. Fromm (Exhibit E). We asked why FMCSA treated SBTC differently than it treated OOIDA. However, the agency did not respond.

It therefore appears that although there is just cause to develop a new class exemption rule, you simply choose not to do so, so that you may continue to try to block the SBTC from filing petitions for redress of grievances through selective enforcement of rules that are not applicable to trade groups and impossible to comply with. The agency should know by now this unlawful behavior all but guarantees ongoing litigation.

As you know, this matter is indeed now the subject of a Federal Lawsuit because there has since been a clear pattern and practice of the FMCSA discriminating against the SBTC and its leadership in violation of its First Amendment rights to petition the government for redress of grievances.

Alas, we will leave that matter to the Courts to resolve and are confident justice will be served.

Sincerely,

/s/ JAMES LAMB

SBTC Executive Director

cc: Mr. Laurence Socci, Esq. (via email)