



September 9, 2021

Mr. R. Ryan Posten,
Associate Administrator for Rulemaking
USDOT NHTSA
1200 New Jersey Avenue SE.
Washington, DC 20590

Dear Mr. Posten,

Thank you for your letter dated today denying our December 2019 and March 2021 petitions to the Secretary of Transportation (Secretary) for motor vehicles standards.

In your letter, you suggest our petitions never were actually petitions for motor vehicle standards. Please be advised it is the SBTC's position that the Secretary has unlawfully handled these petitions in an arbitrary and capricious fashion because the Secretary did not respond either time within the 120 statutory period prescribed by *49 U.S. Code §30162* and the Secretary's untimely response otherwise violates the Administrative Procedure Act (*5 U.S. Code § 555*).

We contend that once an interested party puts pen to paper and frames a request in good faith as a petition for motor vehicle standards as we did twice over the past two years, the only options the Secretary has is to either approve the request and commence a proceeding, issue an order, or deny the petition within 120 days. In fact, the very language of the *49 U.S. Code §30162* is quite clear that an interested party is making a "claim" that a motor vehicle standard or order is necessary.

§30162. Petitions by interested persons for standards and enforcement

(b) Statement of Facts .-The petition must state facts that the person **claims** establish that a motor vehicle safety standard or order referred to in subsection (a) of this section is necessary and briefly describe the order the Secretary should issue.

Mr. R. Ryan Posten

September 9, 2021

Page 2 of 3.

That then starts the clock and sets the Secretary's legal deadline. Twice, we noted the deadline in the request itself and twice the Secretary and/or the Secretary's designee NHTSA simply chose to ignore the deadline. Your opportunity to lawfully tell us the petitions do not conform in your opinion to a bona fide petition for motor vehicles standards expired 120 days after the petitions were filed under *49 U.S. Code §30162*. Prior to commencing legal action, we gave the Secretary's office two distinct chances to comply with the law out of respect for the new administration that took the helm in January and the COVID pandemic.

Even if we disagree on the applicability of *49 U.S. Code §30162* to these petitions, the APA is very clear that the Secretary is to conclude any matter before her or him within a "reasonable time."

I would point to APA statute *5 U.S. Code § 555 - Ancillary matters* that --regardless of what the agency ultimately labels our petitions-- states:

(b)...With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it (emphasis added)... and

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

The government cannot knowingly ignore a petition --twice-- for up to 21 months and then --only when the Secretary is being sued and has to account for his inaction before a Federal Court--finally respond and declare it was never a bona fide petition for motor vehicle standards in the first place to get off the hook. While your position may be a reasonable basis for denial, it is **not** a basis to mitigate the Secretary's failure to respond to avoid culpability for a two-fold procedural violation of law. We believe the Court will find this as offensive to due process as we do.

Mr. R. Ryan Posten

September 9, 2021

Page 3 of 3.

As the Court knows, and the Secretary should know, administrative law is about Congress' intent to regulate the bureaucratic agencies. The Secretary cannot now hide his failure to respond to a petitioner grounded in some Orwellian attempt to erase history. Congress' protection of due process and their mandate for reasonable expediency are the essence of the protections inherent within these aforementioned statutes and we believe the Court will concur.

As the SBTC is currently investigating the extent to which the SBTC's requests to the Department are handled differently than requests submitted by other similarly-situated interested parties, including, but not limited to trade groups and other non-profit organizations, the SBTC hereby requests pursuant to the **Freedom of Information Act** (FOIA) copies of any and all petitions for motor vehicle standards as characterized by the requestor that were received by the NHTSA --and/or the Secretary that were then referred to NHTSA --and the Department's responses thereto on the Secretary's behalf for the period January 1, 2010 to August 31, 2021.

Accordingly, by copy of this email, I request NHTSA's records access officer process this letter as a FOIA request and advise when we might expect a response.

Thank you.

Sincerely,

/s/ JAMES LAMB
SBTC Executive Director

Cc: Secretary Buttigieg (via John.Putnam@dot.gov)
Larry Minor, FMCSA
Laurence Socci, Esq.
NHTSAFOIAPublicLiaison@dot.gov