



Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029
Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20001
Tel: (202) 347-2007 Fax: (202) 347-2008

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The Honorable Robin Hutcheson
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2022-0078, “Electronic Logging Device Revisions”

Dear Administrator Hutcheson,

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks.

Our members have vigorously opposed the electronic logging device (ELD) mandate since its inception. There was never sufficient research indicating the mandate would improve highway safety and the agency still lacks data demonstrating any positive safety results since its full implementation. OOIDA notes this proposal is largely focused on expanding the unproven ELD mandate, whether by including drivers operating currently-exempted equipment or increasing the types and frequency of data recorded by devices. It is disappointing the agency continues to ignore the genuine concerns drivers have with the recording and monitoring of their individual activities and movements. Drivers remain unsure of who can access ELD information, how long is it retained, and what is done with it once compliance has been assessed. This primarily relates to manufacturers, but drivers are increasingly concerned about roadside inspections, when enforcement officers not only access, but also transmit ELD records.

OOIDA submits the following comments and suggestions on proposed revisions to the ELD mandate:

1. Applicability to Pre-2000 Engines

a. Many vehicles with pre-2000 engines and most vehicles with rebuilt pre-2000 engines have engine control modules (ECMs) installed that could accommodate an ELD. Should FMCSA re-evaluate or modify the applicability of the current ELD regulation for re-built or re-manufactured CMV engines or glider kits?

No. The agency lacks data confirming the ELD mandate has improved highway safety and has failed to demonstrate how the expansion of existing requirements to vehicles operating on pre-2000 and rebuilt pre-2000 engines would enhance safety. OOIDA is unaware of any research that demonstrates vehicles operating under the pre-2000 exemption fail to meet the same level of safety as vehicles with ELDs.

The number of vehicles with pre-2000 engines and rebuilt pre-2000 engines operating on our highways is decreasing each year. Furthermore, not all pre-2000 engines have an ECM to meet the mandate, meaning FMCSA would still need to determine an appropriate cutoff or exemption criteria. Therefore, OOIDA believes the time and resources necessary to expand the scope of the ELD mandate to include vehicles using this equipment, and update enforcement practices, would greatly outweigh any possible negligible safety benefits.

b. Please provide data regarding the size of the glider kit population utilizing pre-2000 engines.

Because of their affordability and reliability, small business truckers and owner-operators are the most likely to operate glider kits. In the most recent survey of OOIDA members, only 5% of respondents indicated they currently run a glider kit. It is to be expected that an even smaller percentage of these respondents use vehicles with pre-2000 engines.

2. Addressing ELD Malfunctions

Currently, § 395.34(a) requires a driver documenting his or her RODS to switch to paper logs when an ELD malfunctions. Section 395.34(c) requires a driver to follow the motor carrier and ELD provider recommendations when a data diagnostic event is logged. Whenever an ELD fails to record a driver's hours, enforcement personnel must be able to review the driver's paper logs. By contrast, when an ELD malfunctions but continues to record the driver's hours accurately, the driver should not switch to paper logs.

Should FMCSA amend carrier and driver responsibilities in § 395.34 to clarify when a driver must switch to paper logs?

Yes. However, the agency must also work with enforcement to ensure motor carriers and drivers are not penalized when ELD failures and malfunctions beyond their control lead to inconsistencies in records.

3. Removal Process

a. If an ELD provider goes out of business and fails to self-revoke, should FMCSA be able to immediately remove the device from the registered ELD list?

Yes. However, motor carriers are generally not informed by an ELD provider when it has gone out of business and fails to self-revoke. If the agency is aware of these changes, more must be done to inform motor carriers their devices may be removed from the

registry. The agency must also work with enforcement to ensure motor carriers are not penalized for using a revoked ELD within the 60-day replacement period.

b. The ELD rule requires ELD providers to keep their information current. However, the rule does not include a time restriction. Should FMCSA require ELD providers to update their listing within 30 calendar days of any change to their registration information found in section 5.1.1? Additionally, should ELD providers be required to confirm their information on an annual basis? Should an ELD provider's ELD be removed from the FMCSA list if it fails to confirm or update its listing on an annual basis?

Yes. The agency should compel ELD providers to keep publicly-available information about their devices as current as possible. Providing the timeliest information will help motor carriers make better decisions about which devices best suit their needs.

c. Under Section 5.4 *Removal of Listed Certification*, providers must respond to the Agency's written notice of required corrective action within 30 days to remain on the list. Additionally, the provider is given 60 days after the Agency provides a written modification to the notice of proposed removal or notice to affirm the proposed removal under Section 5.4.4. Should FMCSA consider decreasing the 60-day period to 30 days, in order to more timely remove an ELD listing found with non-compliance issues that could adversely impact highway safety?

Provided the amount of time motor carriers are afforded to replace revoked devices is not changed, OOIDA supports expediting the removal of non-compliant devices.

d. Should FMCSA consider any other factors related to a carrier's continued use of a device that has been removed from the FMCSA list due to a provider's status (out of business or failure to file an annual registration update)?

Because motor carriers are entirely dependent upon ELD providers and the agency to stay informed about changes to a provider's status, FMCSA should consider all factors related to their continued use of a removed device.

4. Technical Specifications

a. Would ELD providers be able to include, in the output file and registration, the version numbers of the individual components of the ELD (*e.g.*, the software version number running on the graphical user interface/tablet, the firmware running on the gateway/black box, and the software version number of the back-office software), if any of these components were required to comply with the ELD regulations?

The agency should take steps to develop and implement a comprehensive certification process for devices. Drivers do not have the expertise to determine whether a self-certified device listed on the registry meets current requirements, let alone additional technical standards.

b. FMCSA requests information on the impact of including the following data elements to every event. FMCSA believes recording this information would allow the technical specifications to be modified to eliminate the requirements of providing power up and shut down events from vehicles a driver has previously operated that are not associated with the requested driver's data/RODS:

1. Actual odometer
2. Actual engine hours
3. Location description
4. Geo-location
5. VIN
6. Power unit
7. Shipping document number
8. Trailer number
9. Driver
10. Co-driver if there was one
11. Which driver was driving at the time, if there was a co-driver

Many of these factors are not necessary to determine compliance with hours-of-service (HOS) requirements, which, by law, remains the sole purpose of the ELD mandate. Requiring these elements to be captured by ELDs would unreasonably expand the scope of the mandate. We believe the current information recorded by ELDs is more than sufficient to ensure compliance. As a result, we oppose the addition of these data elements.

We have already seen third parties consider using ELD data for other purposes that have nothing to do with HOS compliance or even highway safety. The agency's consideration to have devices gather additional information related to the vehicle, including data that is not necessary to determine HOS compliance, only encourages these efforts.

However, if these additions are required, the agency must ensure devices that do not currently record these factors continue to be considered compliant. If the agency is considering requiring all devices currently in use to be updated to record these new data elements, it must only do so following the implementation of a thorough certification process. Furthermore, the agency must consider the costs motor carriers will incur to update software.

c. To more efficiently monitor a vehicle over the course of its operation, should more frequent intermediate recordings (including the same data elements listed in 4b.) be required on the quarter hour, half hour, three-quarter hour, and hour? If not, what would be a reasonable frequency to require intermediate recordings?

The purpose of the ELD mandate is to ensure driver compliance with hours-of-service requirements, not to monitor vehicles. OOIDA has concerns that requiring ELDs to monitor and record new types of data more frequently increases the possibility that the devices are used for purposes other than monitoring HOS.

d. FMCSA granted a temporary exception ([82 FR 48883](#), Oct. 20, 2017) that allowed all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. Additionally, the ELD would switch to a “driving” duty status under § 395.24 if (1) the driver inputs “driving,” (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geo-fenced yard. Should FMCSA consider adding this temporary exception to the regulation? Are there other factors related to this temporary exception that should be considered?

Yes, this exception should be expanded and made permanent. FMCSA must add truck parking facilities, such as truck stops and rest areas, to this exception.

e. In the preamble to the 2015 final rule, FMCSA stated that the driver was expected to enter a new duty status before powering off the ELD and turning the vehicle off. However, drivers often fail to enter a new duty status prior to powering off the ELD, resulting in the driver remaining in driving status. To eliminate the issue, should the ELD automatically record an on-duty not-driving event following the recording of an engine shutdown? Are there other options that should be considered?

This modification would help ensure drivers are not penalized for a common oversight. However, if this addition is required, devices that are not currently capable of automatically recording a change in status following a shutdown must continue to be considered compliant.

f. The industry has reported that the current 5 second requirement is not enough time for an ELD to obtain the information it has requested from the ECM, as required by section 4.6.1.2 in the Appendix to subpart B of part 395. What would be a reasonable amount of time? Is this an issue only at power up?

This further demonstrates the need to replace the current self-certification of devices with a comprehensive certification process.

g. Should FMCSA consider allowing a driver, rather than the motor carrier, to change his or her ELD configuration to an exempt status to help reduce the administrative burden noted by the industry? Should FMCSA consider expanding the list of special driving categories in § 395.28(a) to include driving performed under an exemption? If so, what data should be recorded to specifically identify who made the change, why the change was made, and where the change took place, to achieve an equivalent level of safety to prevent falsification?

We have concerns this approach would lead to greater coercion of drivers by motor carriers.

h. Would the technical specification changes discussed in this section necessitate a change in ELD hardware? Or could these changes be pushed to existing ELD devices via a software update? If such updates are feasible, what would the cost implications be?

The agency should avoid any modifications that will increase costs for motor carriers.

i. Should other technical specifications, not addressed in this list, be considered for revision to improve ELD data recording, data transfer, cross-border commerce or information security and compliance? Please provide data to support your suggestion.

FMCSA should take action to address known and identified information and cybersecurity risks associated with current devices.

In a Private Industry Notification (PIN), the FBI identified numerous security concerns about ELDs that they recommend carriers should be aware of. The FBI highlights that:

“The ELD mandate does not contain any cybersecurity or quality assurance requirements for suppliers of ELDs. As a result, no third-party validation or testing is required before vendors can self-certify their ELDs. Businesses choosing an ELD to use on their networks must therefore conduct due diligence themselves to mitigate their cyber risk and potential costs in the event of a cyber incident.”

Throughout the rest of the notice, the FBI details questions that carriers should ask ELD manufacturers before choosing a device. These questions are extremely technical.

It is unconscionable that the federal government has burdened small-business carriers with this responsibility. Even though the FBI’s PIN offers questions that carriers should ask manufacturers, it would be extremely difficult for small-businesses to make sense of any answer, much less verify that the manufacturer is telling the truth. In reality, truckers are left to rely on the self-certification of the manufacturer.

FMCSA should consider an information security certification that addresses the issues raised in the FBI PIN. If FMCSA doesn’t think that they have the expertise to confirm the type of questions in this document, we are not sure how they could expect a one-truck carrier to have the technical knowledge to do so.

j. What action(s) do you recommend FMCSA take to ensure that ELD specifications remain current with advances in technology?

The agency must ensure motor carriers are not forced to purchase new devices to maintain compliance simply because technological advances have been made. If ELDs are capable of determining hours-of-service compliance, and have been certified by the agency, motor carriers should be permitted to continue using the devices regardless of technological developments. If the agency plans to make future changes to the mandate due to technological advances, we would appreciate more clarity on what changes the agency may be anticipating.

5. ELD Certification

a. Should FMCSA establish a certification process for ELDs? If so, what should a certification process consist of?

Yes. A comprehensive certification process is long overdue and will provide more certainty to motor carriers when making critical and costly decisions on which devices to purchase. It has become abundantly clear the decision to allow self-certification has been a major disservice to motor carriers, as faulty and ultimately non-compliant devices have been listed on the agency's registry. While mandating the use of ELDs, the federal government must take the necessary steps to ensure all devices listed on the registry are compliant. To the extent possible, efforts should also be made to ensure these devices will remain compliant for the foreseeable future.

b. Based on your answer to the above questions, what would be the costs and benefits of that approach?

Many of our members have reported wasting money purchasing faulty or non-compliant devices they believed were satisfactory simply because they were listed on the agency's registry. Introducing a comprehensive certification process would likely lead to fewer non-compliant devices being listed. This would reduce costs for motor carriers, who currently may need to purchase several self-certified devices before finding one they are certain is compliant.

c. If a certification process is established, how should existing devices be treated?

Existing devices should go through the certification process, but remain compliant until a determination has been made.

Thank you for your consideration of these comments and suggestions.



Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.